

PREM 19/366

Pt 2

Confidential Filing

The taxation of short term Benefits.
 Supplementary benefits and strikers benefits.
 Deeming strike pay for supplementary benefit purposes. Payment of supplementary benefits to strikers.

SOCIAL SERVICES

Pt 1: June 79
Pt 2: January 80

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
23.1.80							
23.1.80							
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13.2.80							
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27.2.1980							
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ends							

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PART 2 ends:-

MISC 33 (80) 8 25.2.80

PART 3 begins:-

MISC 33 (80) 9 26.2.80

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E(80) 2	17/01/80
E(80) 3	17/01/80
MISC 33(80) 1	18/01/80
MISC 33(80) 1 st Meeting, Minutes	18/01/80
MISC 33(80) 2	23/01/80
Limited Circulation Annex E(80) 2 nd Meeting, Mins	23/01/80
MISC 33(80) 2 nd Meeting, Minutes	25/01/80
MISC 33(80) 3	30/01/80
MISC 33(80) 3 rd Meeting, Minutes	01/02/80
MISC 33(80) 4	05/02/80
MISC 33(80) 5	08/02/80
E(80) 9	08/02/80
E(80) 5 th Meeting, Item 2	13/02/80
MISC 33(80) 4 th Meeting, Minutes	15/02/80
MISC 33(80) 6	19/02/80
MISC 33(80) 5 th Meeting, Minutes	20/02/80
MISC 33(80) 7	21/02/80
MISC 33(80) 8	25/02/80

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB (CABINET OFFICE) CLASSES**

Signed *On Wayland*

Date 26 August 2010

PREM Records Team

Prime Minister

Ref. A01511

Should we go for
Cabinet the following

PRIME MINISTER

week?

12

24/2

Strikers and Supplementary Benefits

At your meeting on 12th February, you asked the Official Group MISC 33 to undertake more detailed work on some of the options in their paper MISC 33(80) 5 and to report further.

2. You indicated that you would like this report to be taken by the same informal group of Ministers who met on 12th February, before proposals were put to the Cabinet.

3. We now face a timing problem. The further report is ready (subject to final editing) and I attach a copy. It would just be possible to get this through your informal group (on Tuesday, 26th February) and to circulate a paper to Cabinet to be taken next Thursday. The alternative is to take matters in rather slower time and aim for Cabinet on 6th March. The Cabinet agenda next week is already heavy and a week's slippage for this paper may not matter in operational terms. On the other hand you will want to judge the Parliamentary aspects.

4. We will arrange whichever timetable you prefer.

Min for Cabinet on
6th March

RA

ROBERT ARMSTRONG

22nd February, 1980

The views of the Policy Unit are attached at
Flag A.

ABJ
Duty Clerk.

THE FINANCIAL TREATMENT OF STRIKERS AND THEIR FAMILIES - SECOND REPORT

Note by the Official Group MISC 33

INTRODUCTION

1. Ministers considered MISC 33's first report (MISC 33(80) 5) at a meeting under the Prime Minister's chairmanship on 12 February.

2. Of the options set out in MISC 33(80) 5, Ministers favoured a solution combining Option F (deferring tax refunds and making Supplementary Benefit for strikers' families taxable) with either Option H (reducing the Sup Ben Requirements Level) or Option I ("deeming" that union members received a certain level of strike pay, provisionally £12 in the first instance), together with, perhaps, some elements of Option G (altering the Sup Ben "disregards").

3. Officials were instructed to report further on the preferred solution, so that final decisions could be taken. In the following paragraphs we take each of the elements in turn.

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4. Ministers also asked that Option J (narrowing the qualification for Unemployment Benefit) should be further considered as a separate issue. This will be the subject of a further report.

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TAXATION PROPOSALS (OPTION F)

5. There are two separate proposals - deferment of tax refunds and taxation of Sup Ben. We start with deferment because it can be introduced more quickly than the taxation of Sup Ben and could stand on its own if Ministers wished. Taxation of Sup Ben would involve the deferment of tax refunds for Sup Ben claimants and this would be difficult to arrange if tax refunds to non-claimants were not being deferred as well.

Deferment of Tax Refunds

6. At present, almost all strikers are eligible to receive tax refunds weekly during the strike (see Annex A). Payment of such refunds, where due, is the legal responsibility of the employer unless he formally transfers the responsibility (and makes his records available) to the local tax office. In practice, the availability of refunds depends on whether or not the employer's pay clerks are on strike as well. In the current steel strike it is estimated that refunds have been available to only some 35 per cent of the workforce.

7. Main legislation, as well as regulations, would be needed to

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defer the present entitlement to tax refunds. It could be incorporated
in this year's Finance Bill. This would mean that refunds could be
deferred from a point later this year - by November. It would need
to use the same broad definition of strikers as is used for Sup Ben,
ie covering all those involved in a trade dispute including those
locked out. In practice it would have to apply equally to unionists
and non-unionists. Deferment of tax refunds during a period of
unemployment could if Ministers wished be included in the same
legislation. This issue is already before Ministers in the
Chancellor of the Exchequer's paper E(80) 17.

8. The responsibility for withholding refunds and paying them at
the end of the strike would normally rest with the employer, without
any intervention by the Inland Revenue, In general, the change would
reduce the striker's financial resources during the strike, but would
have no long-term effect because he would get the money later. It
would be neutral in revenue terms. (The position of strikers receiving
Sup Ben is more complicated - see paragraphs 10-13 below.)

9. Inevitably, some strikes will run across the end of a tax year.
It would be administratively tidier in those cases to make refunds

to strikers at the end of the tax year, rather than wait for the end of the strike. But it would seem arbitrary to support some strikers, but not others, by tax refunds during the strike, and the refunds might help the strike to continue. We therefore recommend that refunds should be withheld from strikers until the strike is over, irrespective of the time of year.

Tax Refunds and Supplementary Benefit

10. Where a striker receives Sup Ben, withholding tax refunds will increase his entitlement to Sup Ben during the strike, because he will have less "miscellaneous income" to offset against it.

But he will still receive the tax refund at the end of the strike.

If the deferment of tax refunds were introduced on its own, strikers on Sup Ben would be better off in total than they are now (see Annex B, example 2). If the deferment is combined with a £12

"deeming" of strike pay, strikers will be worse off than at present

both during the strike and in terms of total payments (Annex B,

example 3).

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11. We have considered whether anything could be done to avoid what would be, in effect, a double payment by the Exchequer.

There are two basic possibilities -

(i) to claw back the extra Sup Ben from the tax refund at the end of the strike.

(ii) to reduce the Sup Ben payable during the strike by reference to the tax refund which will become payable at the end.

12. The claw-back option seemed effective in principle but on closer examination we concluded that there were severe practical objections to it. It would impose a heavy workload on the employers who would have to make the calculations, and it would probably be incompatible in practice with any proposal to tax Sup Ben.

13. Reduction of Sup Ben during the strike could be achieved in two ways, either by taking account of the accruals of tax refund as if they were being paid in cash, or (for unionists only) by increasing

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the amount of strike pay which the unionist was deemed to receive. The effect of either approach (assuming that Sup Ben is taxed) is shown in Annex B, example 6. The reduction in Sup Ben during the strike would tend to put greater pressure on the striker to return to work, but the question arises whether the likely increase in hardship claims could in practice be resisted. This question is further discussed in paragraph 19 below.

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Taxation of Supplementary Benefits

14. Ministers have decided to tax Sup Ben paid to the unemployed, and at the meeting on 12 February it was argued to be inequitable not to do the same for Sup Ben paid to strikers' families. We assume that the taxation of Sup Ben for strikers' families would follow the pattern of taxation on Sup Ben to the unemployed in two important respects -

i. The payments for the striker's wife or other adult dependant (£14.65) would be taxable, but not the additions for children, rent, etc. Because Sup Ben tops up other income, this means that any benefit paid would be taxable up to the £14.65 level.

ii. The benefits would be taxable subsequently not currently, so the striker's tax position would be frozen while he was on strike, with neither refunds nor deductions of tax being made.

15. The taxation of Sup Ben paid to the unemployed is to begin in April 1982, following legislation in next year's Finance Bill.

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The taxation of Sup Ben paid to strikers could be introduced simultaneously.

16. The benefit would be brought into tax by DHSS Benefit Office notifying the striker's employer of the amount of taxable benefit he had received during the strike. DHSS would pass this information to the employer as soon as possible after the strike had ended but there would necessarily be some delays in those offices with large numbers of claimants. This would mean in practice that the payment of tax refunds (to all strikers - not just those who had received Sup Ben) could be delayed for up to a month after the end of the strike

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SOCIAL SECURITY MEASURES

Choice between reducing the Requirements Level and deeming strike pay
(Options H and I)

17. These two options have the same effect, of reducing the Sup Ben payable to strikers' families. But they achieve it in fundamentally different ways. The case for Option H rests essentially on the fact that strikes are of finite and usually short duration. It can therefore be argued that strikers' families need less money in total than the families of, say, unemployed Sup Ben recipients, who may be on the standard rates indefinitely. But this option fails to put the onus of supporting strikers' families on to the trade unions. Option I on the other hand involves saying that unionists' families need less Sup Ben than others because they have a source of income - strike pay - not available to other Sup Ben recipients, and that there is a duty on trade unions to support their members.

18. We have assumed that Ministers will prefer Option I, which will mean that when striking union members claim Sup Ben they will be treated as if they had a certain level - provisionally £12 per week-strike pay whether the actual strike pay is in fact nil or

anything up to that level.

19. If the deeming option is accepted DHSS would propose to instruct their local offices that the non-payment of the deemed sum by the union should not be accepted as a ground for making hardship payments (though such payments would still be available for hardships unconnected with the strike eg fire and flood). DHSS officials consider that this policy line could be sustained with deeming at £12 a week, and with increases to reflect inflation. But the pressure for hardship payments would become harder to resist if the deemed level were set higher in real terms.

20. Ministers may wish to consider whether the initial level of "deemed" strike pay should be increased broadly in line with inflation or whether the aim should be to increase the level in real terms with a view to its eventually reaching the SB level. If they decide on the latter the question arises whether this intention should be announced at the outset.

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Disregards (Option G)

21. The present disregards of income for Sup Ben purposes are: £4 of wife's earnings; £2 of the striker's own part-time earnings; and £4 of miscellaneous other income, including strike pay, tax refund, and war pension.
22. The Ministerial meeting on 12 February agreed that the disregard of wife's earnings should not be changed, and this disregard is not further discussed in this report.
23. The disregard of the striker's own part-time earnings follows that for the unemployed. It is given to the unemployed so that there is no total disincentive to earn. But the same argument does not apply to the striker. It would be a useful simplification to abolish this disregard for strikers. This could be done on its own or in combination with other changes.
24. There remains the £4 miscellaneous income disregard. Its effect is to leave the striker's family £4 better off when he has (or is "deemed" to have) the income to disregard. In practice the disregard is absorbed by a tax refund in most cases at present. With deferment of tax refunds during the strike as discussed above, there arises the question of the application of the disregard to strike pay.

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25. With the proposal to deem £12 strike pay, there is a strong case for not allowing strike pay - deemed or real - to qualify for the disregard at all. The aim of the new policy is to transfer to the unions some of the cost of supporting their members who are on strike, and to reduce Sup Ben even where the unions do not pay the amount of strike pay deemed. This effect will be lessened if the £4 disregard is kept. For example, a family might have a Requirements Level of £30 per week. At present, they would be receiving £30 per week Sup Ben. If they are deemed to be receiving £12 per week strike pay, and the £4 disregard is abolished, the Sup Ben payments will drop by £12, to £18 a week. But if the disregard is kept, they will drop by only £8, to £22 per week. Therefore, to maintain the full effect of the £12 deeming, we recommend that there should be no disregard for strike pay. Strike pay actually received up to £12 would not be offset against the new reduced entitlement.

26. Under this proposal, there will be no financial incentive for the unions to pitch strike pay at any level between £12 and the Sup Ben Requirements Level for the minority of their members on Sup Ben - between those levels the extra money will benefit the Exchequer, not the striker. It is comparatively rare for strike pay in large unions to be in this band - payments are usually below £12 or much higher, for example in selective strikes where the union provides full pay. If the Government wished to encourage payments somewhat above £12 (perhaps as a prelude to raising the "deeming" level in real terms) it could do so by having a disregard for strike pay between £12 and say £16 per week. But this would not sit easily with the Government's general approach to social security (it would give more help to the less needy) and we do not recommend introducing it.

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27. We recommend that the abolition of the disregard for strike pay should be achieved not by making the miscellaneous income disregard unavailable to strikers, but by excluding strike pay from the terms of the disregard. In this way a striker who had a war pension of say £4 per week could continue to benefit from it.

Strikers without Dependants

28. At present a striker without dependants is expected to make his final pay packet (plus any income during the strike) last at the rate of £16.50* a week. Only when his income has run out at this rate is he considered to be in urgent need on grounds of hardship. He will then get his income made up to £12.50* a week in supplementary benefit if he can get no help from anywhere else.

29. These rules will continue for the non-unionist. For the unionist, the amount of deemed strike pay is sufficiently close to the level to which supplementary benefit makes up his income, that it seems reasonable to say that unionist strikers without dependants should not be able to get any urgent need payments (except for fire, flood, etc). They should look to their union for support. This would be the same approach as is suggested for strikers with dependants in paragraph 19 above, the only difference being that the striker with dependants would receive reduced Sup Ben while the striker without dependants received none at all.

*These figures will be increased in November with the supplementary benefit uprating - probably to around £19 and £14 respectively.

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Social Security Legislation

30. All the supplementary benefit changes outlined above (deemed strike pay; alteration or abolition of disregards; reduction of requirements; restriction on urgent need payments) could be achieved in regulations under powers being taken in the current Social Security Bill. The aim is for Royal Assent in May.

31. However, during debates on the Bill, the Opposition have been asking for assurances that any changes in the rules would be made in fresh main legislation, not, for example, by amendments at Report stage (due week of 17 March) or by regulations. At an earlier stage DHSS Ministers said that they did not completely rule out the possibility of using the Social Security Bill, but the timing is now such that any attempt to do so would be highly controversial.

32. If Ministers therefore decide to proceed by way of main legislation, they could use a further Social Security Bill which is due for presentation in the last week of March. The aim is for Royal Assent by the summer recess.

STAFFING IMPLICATIONS

33. The proposals for deferring tax refunds, and for the taxation of Sup Ben would involve a substantial staff effort in DHSS. The precise level would depend on the nature of the strike (especially the number of separate employers involved and the number of strike centres). A preliminary estimate based on a strike involving a small number of

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employers and lasting 3 weeks is that some 700 man hours would be needed for 10,000 strike claims. The deeming proposal would lead to a small net saving in staff. There would be a reduction in staff effort because the number of successful claims would be reduced, partially offset by the extra/^{staff}cost of the more complicated assessment process and of establishing whether the striker was a union member or not. There would also be an increase in the number of appeals.

Conclusions

34. Ministers may wish to consider a package on the following lines. Its effects are set out at Annex B, Example 5 for the unionist and Example 4 for the non-unionist. The effects which could be achieved this winter are at Example 2 for the non-unionist and Example 3 for the unionist.

35. A number of the elements of the package could be implemented on their own. Where there are links these are indicated. Ministers could therefore decide on certain measures for early announcement, leaving decisions on others to follow.

a. Tax measures

i) Defer tax rebates to strikers until the end of the strike. Could be implemented this year if powers are taken in the 1980 Finance Bill. Could be applied to the unemployed at the same time. Raises the question of whether to withhold the extra Sup Ben payments which would otherwise become payable (see paragraphs 10-13 and Annex B, Example 6).

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ii) Make the Sup Ben paid to strikers taxable. Could be implemented in April 1982 at the same time as taxation of Sup Ben to the unemployed. Presents administrative difficulties if (i) is not implemented as well, though (i) could be implemented on its own.

b. Social security measures

(All could be implemented this year through regulations or main legislation in the Social Security No 3 Bill).

iii) Deem trade unionists on strike to be receiving a certain level of strike pay, initially £12 per week, whether they actually do so or not.

iv) Debar unionist strikers from receiving any urgent needs payments for hardship except for causes unrelated to the strike.

v) Abolish the disregard of £2 per week of the striker's own part-time earnings.

vi) Make strike pay (deemed or real) ineligible for the miscellaneous income disregard.

Cabinet Office

22 February 1980

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STRIKE BEGINS

SINGLE MAN*

MARRIED MAN**

Weekly refund

Weekly refund

Mid-May

£7.50 until
6 September
when all tax
is refunded.

£11.20 until
12 July when all
tax is refunded.

Mid-September }
Mid-January }

£7.50 for the
rest of the tax
year, ie until
5 April

£11.20 for the
rest of the tax
year, ie until
5 April.

* With previous weekly earnings of £120 and the single person's tax allowance only.

** With previous weekly earnings of £120 and the married man's tax allowance only.

Note

When a person who has paid tax earlier in the tax year goes on strike his earnings for the year remain static but his allowances continue to accrue week by week. These allowances are set against those earnings making the tax already paid disproportionate, so that a refund becomes due. The weekly refund represents the value to the basic rate taxpayer of his personal allowance and lower rate band of tax ie the difference between a 25% and a 30% rate of tax on the first £750 of his taxable income.

Financial position of striker receiving both Sup Ben and tax refunds

Assumptions:

<ul style="list-style-type: none"> - married couple, two children (aged 7 and 4) - husband earning average wages - entitled to married tax allowance only - no other resources 	<p><u>Sup Ben entitlement:</u></p> <p>for wife: £14.65</p> <p>children: £11.45</p> <p>rent: £ 7.00</p> <hr style="width: 50%; margin-left: auto; margin-right: 0;"/> <p>£33.10</p> <hr style="width: 50%; margin-left: auto; margin-right: 0;"/>
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Note If the husband were unemployed, the entitlement would include a further £15.05 for the husband, making a total of £48.15.

Examples:

	<u>Weekly income during strike</u>	<u>Weekly income per week of strike</u> (including income received after the strike)
1. Present position	£37.10 (Sup Ben £33.10 + £4 tax refund disregarded)	£37.10
2. Tax refund withheld till after strike	£33.10 (Sup Ben)	£44.10 (including £11 per week refund)
3. Tax refund withheld till after strike. Sup Ben not taxed. £12 strike pay deemed.	£21.10 (Sup Ben - £12)	£32.10 (including £11 per week refund)
4. Sup Ben taxed (tax refunds deferred)	£33.10 (Sup Ben)	£39.70 (including refunds of £6.60 pw. ie £11 minus tax on £14.65 of Sup Ben)
5. Sup Ben taxed and £12 deemed strike pay	£21.10 (Sup Ben - £12)	£27.70 (£21.10 + £6.60 as above)
6. Sup Ben taxed. Tax refund and £12 strike pay both deemed	£14.50 (Sup Ben minus deemed strike pay of £12 and deemed tax refund of £6.60)	£21.10 (£14.50 + £6.60 refund).

MR LANKESTER

22 February 1980

*cc Mr Wolfson
Mr Hodgson.*

FINANCIAL TREATMENT OF STRIKERS AND FAMILIES: SECOND REPORT BY MISC 33

1. The primary aim of this exercise has been to change the bargaining balance between employers and employees. At present, trade union negotiators know that if a prolonged strike takes place, there will be an inexhaustible safety net for their members, while the employers' position will steadily deteriorate. It seems to us that the decision to take a more cautious approach on immunities for secondary action strengthens the case for changing the bargaining balance as much as possible through changes to the SB regime.

2. The MISC 33 report is long and complicated. The key question Ministers must decide is how far they want to go in reducing the weekly income available to a striker and his family from SB and tax reliefs combined. This is summarised in the examples at Annex B.

3. Most officials think that Ministers only want to reduce the £37.10 example (itself rather a low example, since allowances are higher for older children and £7 seems an unusually low rent to me) to £21.10. This would be a reduction of weekly income of £16 - unless, of course, the trade union actually paid strike pay. If strike pay was paid, there would be a smaller reduction, or perhaps none at all.

4. However, I think some Ministers last week may have been willing to see a larger reduction in strikers' weekly income. It may have been felt that deeming £12 should be combined with deferring income tax rebates (typically, £11), ie a total reduction of £23 per week.

5. We favour this bigger reduction. If this is what Ministers want, it would be perfectly simple to raise the level of deeming to £19 to achieve this effect.

6. The last draft of the paper did not bring out Ministers' decision to increase progressively the level of deeming in real terms. This seems to us a very important part of the package. *(As Ministers recognised this would eventually lead back to option A - or less drastically B - in the earlier paper.)*

ANDREW DUGUID



K 10.
File
Social Services

10 DOWNING STREET

cc Master set

cc Mr Wolfson
Mr A. Duguid

From the Private Secretary

13 February 1980

THE FINANCIAL TREATMENT OF STRIKERS AND THEIR FAMILIES

The Prime Minister held a meeting last evening to discuss the options regarding the financial treatment of strikers and their families. The following were present in addition to the Home Secretary: the Chancellor of the Exchequer, the Secretaries of State for Employment, Industry, Social Services and Trade, Mr. D. Wolfson, Mr. J. Hoskyns and Mr. P. Le Cheminant. The meeting had before it the report by officials which had been commissioned by the Prime Minister following the Cabinet discussion on 20 December.

Ministers considered each of the options set out in the officials' report and the following were the main points made in discussion:

- v (i) Option A: It was pointed out that this would involve a very fundamental change, and that, if adopted, it would have to be accompanied by new hardship provisions. On the other hand, it was argued that to some extent this would restore the position to what it had been before the 1966 Social Security Act. Before this Act, strikers had obtained National Assistance for their families relatively infrequently; by introducing the concept of entitlement, the Act had encouraged strikers to apply for Supplementary Benefit. Against this, however, it was pointed out that nothing was actually done in the 1966 legislation to make Supplementary Benefit for strikers' families more widely available than National Assistance had been. It was generally agreed that this option was not worth pursuing.
- (ii) Option B: It was argued that this option would be ineffectual. Strong unions would demand that their obligation to repay money due to the Government should be taken into account in settlements. Furthermore, as strikes went on, unions would come back to the Government for additional money; and the Government would appear to be financing their continuation. In theory, any funds lent by the Government to unions might be repayable by individual members after they returned to work. But this would cause considerable bitterness - not least because, after a prolonged strike, the individual striker might owe the Government very considerable sums of money. It was generally agreed that this option was also not worth pursuing.

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- (iii) Option C: It was argued that unions would disobey the law and simply fail to pay strike pay at the required level. Again, this was not worth pursuing.
- (iv) Option D: The same considerations applied, and this option should not be pursued.
- (v) Option E: It was pointed out that this would not diminish the income of strikers' families during a strike, and - as already argued in relation to Option B - recovery of the money after the strike would prolong the bitterness.
- This option, too, should not be pursued.
- (vi) Option F: It was pointed out that the great majority of strikers were not eligible for Supplementary Benefit. The proposition that tax refunds should be deferred to the end of the strike or the end of a tax year had the great merit, compared with the other options, that it would create a disincentive to strike generally. It would also be worth making Supplementary Benefit for strikers' families taxable; and indeed, it would be inequitable not to tax strikers' Supplementary Benefit if, as had already been decided, unemployment benefit was to become taxable. But, as with unemployment benefit, it would not be possible to tax Supplementary Benefit for strikers' families until 1981 at the earliest. On the other hand, it was pointed out that if tax refunds were to be deferred, those families receiving Supplementary Benefit during a strike would receive more than they do at present. In most cases, the total amount of benefit-come-rebate would be more than it is now. While this option seemed one of the most promising, the latter problem would need to be considered further.
- (vii) Option G: It was argued that this option was a possibility but it ought to be considered alongside the "deeming" option I with which it interlinked. In any event, it would not be desirable to eliminate present disregards given for the wife's earnings, and it might well be sensible to increase the disregard for strike pay as a counterpart to "deeming" under Option I.
- (viii) Option H: It was argued that the "requirements level" should be held steady for strikers while for non-strikers it would continue to rise with inflation. However, this would have only a slow effect. If the "requirements level" for strikers was reduced by an arbitrary figure, it would be hard to defend since it would imply that strikers' families "need" less money than other people. Against this, it was pointed out that this was no different in effect from the "deeming" option. Accordingly, it would be worth considering further as an alternative to "deeming".
- (ix) Option I: It was pointed out that the "deeming" proposal had been opposed in Cabinet because it had been thought impossible to distinguish between unionists and non-unionists. DHSS now advised that it was possible to make this distinction. Accordingly, there was much to be said for the proposal. It would be right to exclude non-unionists partly because they had no possibility of receiving strike pay and partly because otherwise it would look as if the Government were inciting them to become union members. As for the amount that should be "deemed" it would be better to start at, say, twelve pounds and announce that this would be increased progressively.

(x) Option J: It was argued that narrowing the qualification for unemployment benefit to what it had been before the Employment Protection Act 1975 would result in pressure being brought to bear on strikers by those laid off following a strike. On the other hand, the pre-1975 position had produced cases of real and unjustified hardship - particularly for those who were in the same "grade and class" as the strikers but who had no interest in the dispute. It was agreed that this option was not a real alternative to the others, but should be considered further on its own merits. There might at least be a case for returning the qualification for unemployment benefit some way to what it had been before 1975.

(xi) Option K: It was agreed that this was a non-starter.

Summing up this part of the discussion, the Prime Minister said that Ministers had now narrowed the options down to a combination of option F and either options H or I. Officials should now consider these options further and prepare a report for Ministers with a view to final decisions within the next few weeks.

Finally, there was a short discussion about timing and legislation. Legislation would be needed for each of the favoured options, and it was important that it should be enacted before next winter. The Secretary of State for Social Services said that the provisions could be included in the Social Security No. 3 Bill which he was proposing should cover the de-indexation of short-term benefits and the abolition of the earnings related supplement. The Prime Minister said that it would be better if the provisions on strikers' benefits could be included in the Finance Bill. The Chancellor said that he would consider this, though he was not confident that it would be possible.

I am sending copies of this letter to John Wiggins (HM Treasury), Ian Fair (Department of Employment), Ian Ellison (Department of Industry), Don Brereton (Department of Health and Social Security), Stuart Hampson (Department of Trade) and to David Wright (Cabinet Office).

I. P. LANKESTER

J. A. Chilcot, Esq.,
Home Office.

sol.

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PRIME MINISTER

Taxation of Benefits Paid to the Unemployed
(E(80) 9)

BACKGROUND

E Committee decided in principle on 23rd January on the taxation of short term benefits paid to the unemployed, by the 'subsequent' method of taxation. The benefits to be covered included unemployment benefit itself, the Earnings Related Supplement, and supplementary benefit paid to the unemployed himself (though not to certain dependants).

2. The Committee invited the Chancellor to reconsider the timing: it was suggested that a November 1981 start-up might be possible, rather than Spring 1982 as planned. In the light of that, he was asked also to consider the revised staffing requirements. The Minister of State, Northern Ireland Office, was asked to look at both points as they affected the rather separate problems of Northern Ireland.

3. Since then, Cabinet has confirmed the public expenditure decisions, including a limited measure of de-indexation of short term benefits. This was specifically seen as an interim measure, pending the inclusion of those benefits in the tax net work. In a related field, your meeting on Tuesday will have taken decisions on strikers and supplementary benefit (subject to Cabinet approval). Finally, there is the question of manpower. The last discussion took place against the background of firm Cabinet decisions on manpower cuts, taken in December. Since then, it has become clear that the imposition of cash limits on Civil Service manpower as a whole - to be considered by Cabinet on 28th February - is likely to impose a further volume squeeze, requiring additional manpower cuts. The base-line on which earlier calculations were done has therefore shifted somewhat.

HANDLING

4. I suggest you take the discussion in two separate stages: the operative date, and the question of staff numbers.

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Operative Date

5. You might invite the Chancellor to lead the discussion on the first point, seeking comments successively from the Secretary of State for Social Services, the Secretary of State for Employment and the Minister of State, Northern Ireland Office.

6. It seems generally agreed that the November 1981 deadline is just too tight. Moreover, now that Cabinet has decided on the interim de-indexation of short term benefits, there is less need for an early start-up - either for PSBR reasons, or to tackle the 'why work' syndrome. The Committee should, therefore, be able to agree fairly rapidly on an April 1982 start-up. This would also apply in Northern Ireland, but there the operation would be performed manually until 1984 when their benefit payment becomes computerised.

Staffing

7. There are four separate positions to consider (and you might call on each Minister in turn to speak, followed by the Minister of State, Civil Service Department):

- 12th cut.
5/1982.
- (i) The Department of Employment makes an additional bid for 600 staff which they claim they cannot absorb, particularly in view of the cuts they have already taken. It is fair to record that, proportionately, the Department of Employment have taken one of the biggest staff cuts of all so far.
- (ii) Department of Health and Social Security. An extra 90 staff. The Secretary of State agreed last time to absorb this small additional requirement. It should cause him no difficulty.
- (iii) Inland Revenue. The bid is 1,400. Admittedly, further examination may bring this, and the other bids, down somewhat: but it would be unwise to count on this. The Chancellor proposes that this additional bid be offset against the further unspecified savings of 5,500 he promised in the cuts exercise. The Civil Service Department, with Mr. Channon's support,
- 79,000.

CONFIDENTIAL

believe that further, though unspecified, reductions should be possible, which would offset this extra bid. But they admit (we have pressed them on this) that they cannot actually point to areas in which reduction could be made. They also point out that any figures agreed at this stage are likely to be swamped by the imposition of further volume squeezes as a result of the cash limits decision. It might therefore be possible for the Committee to agree that the extra staff requirement should be noted, offsetting savings found wherever possible, and the overall position reviewed again when Cabinet next considers public service manpower.

- (iv) Northern Ireland. Mr. Rossi was not able to report in writing before the meeting. But I understand that the manual operation would need 100 extra staff, which would be roughly halved after computerisation. Northern Ireland Ministers are still (Tuesday) considering whether they can absorb this number. The argument is much the same as over Inland Revenue: any deal done now is in practice likely to be swamped by further volume squeezes.

CONCLUSIONS

8. Subject to the outcome of the discussion, I think there would be two conclusions:-

- (i) To agree that the scheme already approved by Ministers should be introduced from April 1982, including Northern Ireland.
- (ii) To note the manpower required and to invite the Ministers concerned to seek the maximum possible offsetting savings.

RA

Robert Armstrong

12th February 1980

Ref. A01387

PRIME MINISTER

The Financial Treatment of Strikers and their Families

(MISC 33(80) 5)

BACKGROUND

When the Cabinet discussed the treatment of strikers and supplementary benefit at their meeting on 20th December 1979 (CC(79) 26th Conclusions, Minute 6) they were unwilling to accept the proposal put forward by the Secretary of State for Industry with the agreement of the Chancellor of the Exchequer and the Secretaries of State for Employment and for Social Services, under which all strikers would be "deemed" to have an income of £10 a week. The scheme as then presented made no distinction between unionists and non-unionists. It was this latter feature which aroused the strongest opposition. You subsequently asked officials to prepare a report setting out the various options in this field. It is that report which is the subject of tomorrow's meeting. Assuming that a common line can be agreed tomorrow, the subject will then have to go back to the Cabinet for decision.

2. The report looks comprehensively at the whole range of possible options. Eleven have been identified. The main task of your group will be to reduce the choice to a manageable number for Cabinet, and perhaps, if possible, to come up with a unanimous recommendation.

3. The options are displayed in full in Part V of the report (paragraphs 26-43) and are summarised in the table immediately following paragraph 44. In considering them your colleagues may find it helpful to come to a view on four prior questions discussed elsewhere in the report, namely:-

(a) Whether, in operating the supplementary benefit system, it is possible to distinguish between members and non-members of trade unions.

Officials believe that it is possible to do so; Mr. Jenkin at Cabinet was less sure.

(b) Whether it is possible to distinguish between the various types of industrial dispute which arise (notably between strikes and lock-outs). Officials believe that this is not possible.



1937

MINISTRY OF FINANCE

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- (c) Whether it is possible, whatever arrangements are made, for the Government to disavow responsibility for cases of severe hardship arising from the dispute, i.e. going beyond the extraneous "fire and flood" categories which are assumed to merit help in any circumstances. Officials judge it not to be possible for the Government to stand back this far.
- (d) Whether it is possible to rely on trade union organisation coping with a sophisticated workload arising from new arrangements. Officials believe that many unions cannot at present cope in such circumstances.

4. If your colleagues agree with officials' views on these questions then options A and B fall because they would in effect require the unions to take over the responsibilities of the DHSS - a task which is beyond their capabilities. Of the remaining options C (make the unions pay strike pay) and D (make the unions repay supplementary benefit paid to their members) place a direct financial charge on the unions, but would otherwise provide the same measure of protection for those affected by industrial disputes as the present arrangements. The other options apply indirect pressure to the unions by reducing the funds available to those affected by industrial action. In the case of F - deferment of tax refunds - the pressure would apply to all affected by industrial action. The others would affect those who qualify for supplementary benefit (a minority of those involved in most disputes).

HANDLING

5. After seeing whether any colleagues dispute the views of officials on the points set out in paragraph 3 above, you might work through the options:-

Option A and Option B: almost certainly fall through union incapacity.

Option C (a legal requirement on unions to pay strike pay): would have a very direct effect on union funds if it could be made to stick, and the non-unionist would be protected.

Option D (charging the unions after the event with the cost of supplementary benefit to their members): would have a smaller - though significant - effect on union funds and would similarly protect the non-unionist.

Option E (supplementary benefit recoverable from individuals): workable but would apply little pressure on the unions. In equity non-members would also have to repay.

Option F (defer tax refunds): would be an effective deterrent but may be ruled out by past commitments. If colleagues are nevertheless attracted by it, the Chancellor might be asked to consider it further. It is in any case an addition rather than an alternative to the other options.

Option G (reduce disregards): would apply marginal extra pressure to those in receipt of supplementary benefit, but difficult to distinguish in equity between union and non-union members.

Option H (reduce the "requirements" level): is Mr. Nott's suggestion in Cabinet. The real difficulty is presentational because it involves treating strikers (and those laid off or locked out) more harshly than other supplementary benefit recipients (e.g. including the families of convicted criminals).

Option I (the "deeming" option): is that previously considered by Cabinet, but modified to distinguish between union members and non-union members. Those of your colleagues who proposed the earlier scheme may be attracted by this version.

Option J (disqualification for unemployment benefit when laid off): could be combined with other options. The proposal to reverse the earlier legislation has been raised by one particular group of employers, and it might be desirable to consult more widely before a decision is taken. Again, however, this is a measure which can be taken as an addition to other options. Mr. Prior might be asked to report separately.

Option K (the "sword of Damocles"): seems unlikely to have much effect.

6. When the Group has considered the various options, you will wish to consider further the issues of timing, and, if options G, H or I are favoured, the question of the size of the financial penalty. The latter is discussed in paragraph 25 of the paper.

CONCLUSION

7. You may wish to invite the Secretary of State for Industry, as the author of the previous version, to prepare a short paper summarising the Group's conclusions for submission to Cabinet.

Stephen Whitch

for ROBERT ARMSTRONG

11th February, 1980

ME MINISTER

W Wytmore
JMV

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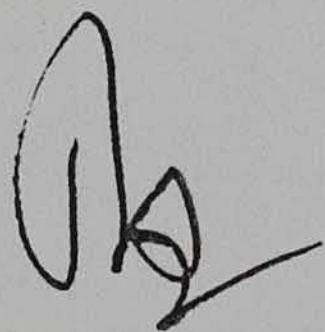
FINANCIAL TREATMENT OF STRIKERS AND THEIR FAMILIES

I have sent copies of the Policy Unit's note on this to the Chancellor and others attending your meeting tomorrow. It recommends Option B - union responsibility for their members' welfare, with Government loans available - combined with Option F - delaying tax rebates - and the reversal of Section 1.1.1 of the Employment Protection Act (described as Option J in the official paper).

We expect colleagues to agree to Options F and J, but they may feel that Option B goes too far. If they are unwilling to place the responsibility firmly on the unions themselves and their members, you might find it helpful to consider two fallback positions.

Our second choice would be Options F and J as before, but combined with Option E - complete recoverability of loans to individuals. It is argued that this would place a heavy administrative burden on DHSS and that is why we would only place it second. However, the numbers claiming benefit would be considerably reduced by making it a loan rather than an outright grant. As a strike lengthened, the prospect of mounting debt would be a considerable source of psychological pressure on the strikers, which would go some way towards restoring the balance of bargaining power.

Our third choice would be to revert to deeming (described as Option I in the paper) but not, of course, deeming non-unionists. If this were adopted, the deemed level of strike pay could be set at either £10 or £15 initially. It could be combined with a clear statement that over several years this would be raised in real terms, leading eventually to a position where unions became largely responsible for the support of their members. Deeming could also be combined with ending the "disregards" for strikers (Option G) which would further reduce the amount of SB paid.



JOHN HOSKYNS

11 February 1980

CONFIDENTIAL



10 DOWNING STREET

11 February 1980

The Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON SW1

Dear Geoffrey.

THE FINANCIAL TREATMENT OF STRIKERS AND
THEIR FAMILIES

The Policy Unit has prepared a note for the Prime Minister with our recommendations on the options considered in the report by MISC 33.

I am sending copies of this note to you, other Ministers attending the meeting to discuss this tomorrow, Sir Robert Armstrong and Sir Kenneth Berrill.

A handwritten signature in black ink, appearing to read 'John Hoskyns', with a horizontal line underneath.

JOHN HOSKYNS

CONFIDENTIAL

CONFIDENTIAL

SUPPLEMENTARY BENEFITS FOR STRIKERS' FAMILIES:

REPORT BY MISC 33

1. The Policy Unit has been associated with the work of MISC 33 in preparing a full report on the background to this issue and the options which are open to Ministers. This note contains our recommendations.

Objective

2. As our Manifesto made clear, the main aim of changes is to help restore the balance of bargaining power in industry by making strike action less attractive. We do not seek to restrict the right to strike, but to ensure that the union and its members have to face up to the consequences. At present, an employer knows that a long strike will steadily deplete his resources and undermine the future of his business. By contrast, the union negotiator is secure in the knowledge that supplementary benefits (SB) will provide a safety-net which is cost-free and inexhaustible. With the cards stacked against them, we cannot be surprised when employers show a lack of resolve in improving productivity or resisting inflationary wage claims. Since our whole economic strategy relies on the determination of management to do better, we must make changes.

Where should responsibility lie?

3. Deeming trade unionists to be in receipt of strike pay would provide a modest step in the right direction. But it would only result in marginally increased pressure on trade union negotiators to think twice before calling a strike and to seek an early resumption of work. And it leaves intact the notion that the Government should be responsible for the welfare of the strikers' families. There is scope for going much further and clearly establishing that the responsibility for the position of strikers' families lies with the strikers themselves and their unions. There is plenty of evidence of public support for this proposition. The survey recently published by The Times found 77% of adults wanting some restriction on SB for strikers' families. Reg Prentice had plenty of support from backbenchers and the media when he recently told the House that the £1m paid out to steel workers' families by the state should have been the responsibility of the unions. The public would welcome the replacement of DHSS stalls to pay out SB to strikers by stalls operated by the unions themselves.

4. Once this responsibility is established, it will help moderate members to oblige their union officials to think twice and negotiations between them and employers will become very much less one-sided. If public opinion can be effectively marshalled, the more fuss trade unions make about this change, the more they will incur unpopularity for trying to avoid their responsibilities. It is, once again, a propaganda battle we have to win. This question - are we prepared to lead and win in public debate - arises on every step we take in Trade Union reform.

/Our preferred course:

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Our preferred course : Option B

5. We favour making it clear that SB will no longer be available to strikers and that it is for trade unions and their members to make arrangements which meet their needs. If unions choose to pay strike pay on a flat-rate basis to all members, regardless of circumstances, that would be up to them. Alternatively, they might decide to concentrate their resources on those of their members most in need. Since the Government would not distinguish between official and unofficial strikes, the unions would be provided with both an incentive and a weapon to control unofficial action.

6. Of course this responsibility would be an unwelcome burden. But over many years, successive Governments have imposed all kinds of burdens on employers from the PAYE system to VAT returns from hundreds of thousands of small businesses. In contrast to these obligations, strikes are optional and we are trying to make them more difficult. Of course, unions would need to be given time to organise themselves. But in the great majority of cases, only a small proportion of the union members will be striking at any one time and a still smaller number would really need financial help. The effort required should be well within the capabilities of a trade union. To the extent that they need to become more responsive to their members' wishes and more systematic in their record-keeping, this ties in well with our wish to make them better able to organise secret ballots, and come under greater pressure from their members to do so.

7. The great majority of trade unions would be well able to meet the cost of hardship amongst a small minority of their members. However, to avoid the charge that unions were being given a responsibility which they had not the resources to meet, the Government could offer to make loans - repayable with interest at commercial rates - available to unions who required them for this purpose, (Option B). In practice, very few unions would be likely to resort to loans from the Government. Where they did, there would be a small problem in fixing the maximum level of such loans and ensuring they were repaid. But these would not be insuperable. The fact that the loan was recoverable would inhibit any tendency to borrow beyond immediate needs, and there is a legal remedy for the Government in the event of failure to repay.

Problems to be overcome

8. Any change in the present arrangements will have some drawbacks, but the need to change the present unsatisfactory position is clear. Each of the following problems can be overcome:

- (a) Arrangements would need to be made for non-union members involved in a trade dispute. We propose that they should continue to receive SB from DHSS, but that these should be in the form of a recoverable loan. If SB was provided as a grant, we think the contrast between the treatment of union and non-union members would be too stark. The number of non-unionist claimants would be small - and further reduced by the deterrent effect of having to repay the money later. They should not present a large administrative problem for DHSS, who already recover loans made to strikers on return to work.

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- (b) The report by officials explains why it is not possible to treat lockouts or those laid off with an interest in the outcome differently from those actually striking. All are regarded as involved in a trade dispute. This problem exists for any solution, but lockouts are very small in number - estimated by the Department of Employment to involve only 1 in 6,000 strikers during 1966-73 - and practically never instituted unilaterally by an employer. (The Rolls Royce case last year was in response to two-day a week strike action.)
- (c) There would need to be some limit set to the Government's willingness to loan funds. Logically, this should be based on an estimate of the amount of SB which would be paid in respect of strikers' families under current arrangements. However, the percentage claiming benefits varies widely. One solution would be to provide loans up to an amount equivalent to the SB entitlements of all striking members' families. Again the need to repay should deter any tendency to over-borrow.
- (d) Even with time to prepare, some unions may find themselves administratively unable to fulfil their new responsibilities at first. Where genuine hardship arose, they might seek to blame the Government. Provided public opinion supports the transfer of responsibility to the union, such blame can be properly redirected. However, if it became a significant problem, it might need to be open to the Government to provide a recoverable loan to an individual striker who was in need, provided he could show that his union had been unable to support him and the union had requested a direct Government loan to help him instead. This would be an admission of failure which we expect trade unions would normally be anxious to avoid. Furthermore, if the trade unions advanced their assistance to their own members as a grant, individuals would have no incentive to go to DHSS for a loan instead.

Other Measures

9. We see a strong case for combining Option B with Option F: treating strikers in the same way as the unemployed for taxation purposes. If Option F is not pursued, strikers will be uniquely favourably treated by the tax system. If it is adopted, a major source of strike income would be removed and claims for SB would increase. This strengthens the case for removing strikers' rights to claim SB and placing the responsibility on the strikers themselves and their unions.

10. If we adopt these measures, we shall succeed in the Manifesto objective of making striking less attractive. To the extent that we succeed, some unions will search (as they are already doing) for ways of calling out a key group of employees only. It is therefore very important that neither employers - through their lay-off pay agreements - nor Government - through the Social Security system - should do anything to encourage these tactics. In principle, those who are laid off by a dispute but stand to benefit from it do not qualify for Unemployment Benefit. Annex 1 to the official

/paper described

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paper describes how a recent change in the Employment Protection Act has slightly relaxed these disqualifications. We think the rules should be restored to the pre-1977 position.

Recommendations

11. We therefore recommend:

- (a) that Option B should be adopted for SB;
- (b) that Option F should also be adopted for the tax treatment of strikers;
- (c) the change introduced by section 111 of the Employment Protection Act (described at Annex 1 of the official paper) should be reversed. (Option J).

Policy Unit

11 February 1980

Original Returned to Hoskyus.

PRIME MINISTER

I attach our recommendations on the report by MISC33 on Supplementary Benefits for strikers' families.

As you know, we have had comments from outside specialists that radical measures on Supplementary Benefits, however rational, will provoke trade union reaction. That should not deter us, but we may give this topic a different political weighting and timing depending on how bold we decide to be on the Employment Bill.

JOHN HOSKYNS
8 February 1980

Ideally, this should be read with the Misc 33 Report, but it can, fairly reasonably, stand alone.

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SUPPLEMENTARY BENEFITS FOR STRIKERS' FAMILIES:

REPORT BY MISC 33

1. The Policy Unit has been associated with the work of MISC 33 in preparing a full report on the background to this issue and the options which are open to Ministers. This note contains our recommendations.

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Where should responsibility lie?

3. Deeming trade unionists to be in receipt of strike pay would provide a modest step in the right direction. But it would only result in marginally increased pressure on trade union negotiators to think twice before calling a strike and to seek an early resumption of work. And it leaves intact the notion that the Government should be responsible for the welfare of the strikers' families. There is scope for going much further and clearly establishing that the responsibility for the position of strikers' families lies with the strikers themselves and their unions. There is plenty of evidence of public support for this proposition. The survey recently published by The Times found 77% of adults wanting some restriction on SB for strikers' families. Reg Prentice had plenty of support from backbenchers and the media when he recently told the House that the £1m paid out to steel workers' families by the state should have been the responsibility of the unions. The public would welcome the replacement of DHSS stalls to pay out SB to strikers by stalls operated by the unions themselves.

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/Our preferred course:

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Our preferred course : Option B

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6. Of course this responsibility would be an unwelcome burden. But over many years, successive Governments have imposed all kinds of burdens on employers from the PAYE system to VAT returns from hundreds of thousands of small businesses. In contrast to these obligations, strikes are optional and we are trying to make them more difficult. Of course, unions would need to be given time to organise themselves. But in the great majority of cases, only a small proportion of the union members will be striking at any one time and a still smaller number would really need financial help. The effort required should be well within the capabilities of a trade union. To the extent that they need to become more responsive to their members' wishes and more systematic in their record-keeping, this ties in well with our wish to make them better able to organise secret ballots, and come under greater pressure from their members to do so.

7. The great majority of trade unions would be well able to meet the cost of hardship amongst a small minority of their members. However, to avoid the charge that unions were being given a responsibility which they had not the resources to meet, the Government could offer to make loans - repayable with interest at commercial rates - available to unions who required them for this purpose, (Option B). In practice, very few unions would be likely to resort to loans from the Government. Where they did, there would be a small problem in fixing the maximum level of such loans and ensuring they were repaid. But these would not be insuperable. The fact that the loan was recoverable would inhibit any tendency to borrow beyond immediate needs, and there is a legal remedy for the Government in the event of failure to repay.

Problems to be overcome

8. Any change in the present arrangements will have some drawbacks, but the need to change the present unsatisfactory position is clear. Each of the following problems can be overcome:

- (a) Arrangements would need to be made for non-union members involved in a trade dispute. We propose that they should continue to receive SB from DHSS, but that these should be in the form of a recoverable loan. If SB was provided as a grant, we think the contrast between the treatment of union and non-union members would be too stark. The number of non-unionist claimants would be small - and further reduced by the deterrent effect of having to repay the money later. They should not present a large administrative problem for DHSS, who already recover loans made to strikers on return to work.

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- (b) The report by officials explains why it is not possible to treat lockouts or those laid off with an interest in the outcome differently from those actually striking. All are regarded as involved in a trade dispute. This problem exists for any solution, but lockouts are very small in number - estimated by the Department of Employment to involve only 1 in 6,000 strikers during 1966-73 - and practically never instituted unilaterally by an employer. (The Rolls Royce case last year was in response to two-day a week strike action.)
- (c) There would need to be some limit set to the Government's willingness to loan funds. Logically, this should be based on an estimate of the amount of SB which would be paid in respect of strikers' families under current arrangements. However, the percentage claiming benefits varies widely. One solution would be to provide loans up to an amount equivalent to the SB entitlements of all striking members' families. Again the need to repay should deter any tendency to over-borrow.
- (d) Even with time to prepare, some unions may find themselves administratively unable to fulfil their new responsibilities at first. Where genuine hardship arose, they might seek to blame the Government. Provided public opinion supports the transfer of responsibility to the union, such blame can be properly redirected. However, if it became a significant problem, it might need to be open to the Government to provide a recoverable loan to an individual striker who was in need, provided he could show that his union had been unable to support him and the union had requested a direct Government loan to help him instead. This would be an admission of failure which we expect trade unions would normally be anxious to avoid. Furthermore, if the trade unions advanced their assistance to their own members as a grant, individuals would have no incentive to go to DHSS for a loan instead.

Other Measures

9. We see a strong case for combining Option B with Option F: treating strikers in the same way as the unemployed for taxation purposes. If Option F is not pursued, strikers will be uniquely favourably treated by the tax system. If it is adopted, a major source of strike income would be removed and claims for SB would increase. This strengthens the case for removing strikers' rights to claim SB and placing the responsibility on the strikers themselves and their unions.

10. If we adopt these measures, we shall succeed in the Manifesto objective of making striking less attractive. To the extent that we succeed, some unions will search (as they are already doing) for ways of calling out a key group of employees only. It is therefore very important that neither employers - through their lay-off pay agreements - nor Government - through the Social Security system - should do anything to encourage these tactics. In principle those who are laid off by a dispute but stand to benefit from it do not qualify for Unemployment Benefit. Annex 1 to the official

/paper described

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paper describes how a recent change in the Employment Protection Act has slightly relaxed these disqualifications. We think the rules should be restored to the pre-1977 position.

Recommendations

11. We therefore recommend:
 - (a) that Option B should be adopted for SB;
 - (b) that Option F should also be adopted for the tax treatment of strikers;
 - (c) the change introduced by section 111 of the Employment Protection Act (described at Annex 1 of the official paper) should be reversed.

cc Mr Duguid

500

CONFIDENTIAL

Prime Minister

For discussion at
small meeting on
Tuesday. See also
John Hoskyns' note in
his file.

MR T P LANKESTER

THE FINANCIAL TREATMENT OF STRIKERS AND THEIR FAMILIES

R 8/2

Following the Cabinet discussion of strikers and supplementary benefits on 20 December 1979, you wrote to John Chilcot at the Home Office on 10 January, recording the Prime Minister's decision that officials should produce a paper on the options for discussion at a small Ministerial meeting prior to further discussion in Cabinet.

2. I now attach the report by officials (MISC 33) for discussion at the Ministerial meeting which has been arranged for 4.00 pm on Tuesday 12 February 1980.

3. Copies of this minute and of the report go to the Private Secretaries to the other Ministers who will be attending the meeting (the Home Secretary, the Chancellor of the Exchequer, and the Secretaries of State for Industry, Employment, Social Services and Trade) and to Sir Robert Armstrong and Sir Kenneth Berrill here at the Cabinet Office.

P Le CHEMINANT

Cabinet Office
8 February 1980

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THE FINANCIAL TREATMENT OF STRIKERS AND THEIR FAMILIES

Report by Officials

INTRODUCTION

1. The Manifesto on which the Government was elected said, in a chapter on "Restoring the Balance" -

Too Many Strikes

"Strikes are too often a weapon of first rather than last resort. One cause is the financial treatment of strikers and their families. In reviewing the position, therefore, we shall ensure that unions bear their fair share of the cost of supporting those of their members who are on strike."

2. The objective, therefore, is to raise the cost to trade unions engaging in strike action. It can be pursued in two ways which are not necessarily mutually exclusive - by aiming -

- i. to increase the strike pay paid by trade unions, with the object of ensuring that strikes are adequately financed without undue dependence on public funds;
- ii. to reduce or eliminate the public funding of strikes with the object of making them more expensive and thus less attractive either for unions themselves (if they increase their strike pay) or for their members (if they do not).

Some of the options below are directed more to one of these aims than to the other. The proposals considered by the Cabinet on 20 December (CC(79) 26th Conclusions, Minute 6) sought to reduce the entitlement of strikers to supplementary benefit (by deeming them to be in receipt of a minimum level of strike pay) and thus exerting pressure on the trade unions to pay more strike pay. The Cabinet, while not necessarily rejecting an indirect approach, objected to the particular proposal because it involved 'deeming' non-members of trade unions to be in receipt of strike pay which they clearly could not receive.

3. The report is divided into six parts: in part I (paragraphs 4-15) we describe the historical, legal and factual background; in part II (paragraphs 16-23) we discuss the fundamental questions of the practicability of distinguishing between members and non-members of trade unions and between different kinds of industrial dispute; in part III (paragraph 24) we consider the issue of 'hardship'; in part IV (paragraph 25) we look at

the size of financial deduction which might be introduced; in part V (paragraphs 2641) we consider the options for action; and in part VI (paragraph 42 and Table) we summarise to help towards conclusions. We have also added detailed factual Annexes where we think these may be useful.

PART I. THE HISTORICAL, LEGAL AND FACTUAL BACKGROUND

Historical

4. Public relief of the destitute family of a striker began under the Poor Law in the 19th century, and the authority for it was confirmed in a test case in the Court of Appeal in 1900. In 1926 relief of the striker himself was authorised if he was no longer physically capable of working. From 1948 national assistance was paid for the family, based on the appropriate scale rates plus rent. The striker himself was statutorily excluded from assistance, but the National Assistance Board could pay if his case was urgent. The main difference made on the changeover from national assistance to supplementary benefit in 1966 was the introduction of a concept of entitlement to supplementary benefit. The aim was to make supplementary benefit more acceptable to pensioners. Nothing was done to make supplementary benefit for strikers' families more widely available than National Assistance had been.

5. The rules were tightened up in 2 respects in 1971. First, the disregard of miscellaneous income was reduced to £1 (now £4). Previously it had been equal to the level of the striker's own requirements - £4.35 in 1971. (The present equivalent figure is £15.05.)

6. Secondly, benefit paid during the first fortnight back at work after a strike, pending receipt of first wages, was made recoverable. The aim was to encourage the employees to get an advance of wages for this period rather than claim benefit.

Present Legal and Financial Position

7. State support is at present on two levels, national and local. At national level anyone who is without employment because of a trade dispute in which he has an interest at his place of work is disqualified from receiving unemployment benefit or supplementary benefit (Sup Ben) for himself. But he can claim Sup Ben for his dependants. The rate for a wife is £14.65 a week, and for each child £5.20-£11.25 according to age. The family's rent will also normally be allowable. Thus a married couple with 2 children aged 7 and 4, and a rent of £9, have an income of £50.15 when the husband is unemployed or sick, but £35.10 when he is on strike.

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8. Because Sup Ben is a supplement to income, the amount he receives for his family will depend on his other sources of income, and the DHSS need to discover what these are. Child Benefit is taken into account in full. Certain items of other income are "disregarded" - £4 of his wife's earnings; £2 of his own part-time earnings; £4 of other miscellaneous income, eg tax refunds, strike pay, war pensions. The average payment in trade disputes in 1979 was £17.40. Single people get Sup Ben only if they can show they are in urgent need. In practice very few are able to satisfy this condition.

9. At local level, a local authority has a duty under S1 of the Children and Young Persons Act 1963 to take steps to prevent children from having to be taken into care and may make payments to avoid this necessity. They may also make payments in respect of rent and rates rebates, which depend for their size on family incomes. A change in law at national level could thus throw a heavier burden on local authorities unless matching changes were made in the legislation applicable to them.

10. The great majority of strikes are over very quickly (83 per cent in less than 2 weeks) (see Annex 2). Sup Ben is in practice largely irrelevant to these strikes because it is not usually paid until the third week of any strike - before that the man should have arrears of pay available which prevent entitlement to benefit. In practice, even when a strike lasts more than 2 weeks only a minority of strikers claim - about 1 in 8 in 1975-1977, (see Annex 2). In the present steel strike about 1 in 5 have claimed, and about £2 million has so far been paid out.

11. In official strikes some unions pay strike pay - but some, including major ones, eg coal and steel - do not. (Annex 3 summarises the position.) Between 1970 and 1975 about one strike in twenty was official.

12. Most 'strikers' receive a tax refund weekly during the strike. The amount depends to some extent on individual circumstances, and on the time in the tax year - but might typically be £11 for a married man.

13. The other main sources of finance available to strikers are pay-in-hand, savings, spouse's earnings and child benefit (offset against Sup Ben if paid). It is also common for strikers to defer payments on such items as rent/mortgage, heating, HP etc during a strike.

14. A study of four lengthy strikes during the 1970s reported by the British Institute of Management found that striker's income included the following main elements - savings 30 per cent, spouse's earnings 23 per cent, pay in hand 17 per cent, tax rebates 14 per cent, Sup Ben 6 per cent. In only one of these strikes was strike-pay paid; it then amounted to about 22 per cent of income. However, all these percentages vary widely from strike to strike and the relevance of Sup Ben to the balance of bargaining power between trade unions and management may be rather greater than they at first suggest. If a strike is allowed to lengthen, an employer's losses are likely to intensify with increasing risk to the future of the business, whereas there is scope for an increasing proportion of strikers to take advantage of the safety net provided by Sup Ben as their savings are eroded. This prospect may have some influence on the behaviour of both parties before and during a strike.

Practice in Other Countries

15. The reported practice in other countries varies (see Annex 4) but some claim not to assist strikers' families at all whereas others pay full social security benefits irrespective of cause. No specific conclusions can be drawn because this is a field where problems of definition make international comparisons difficult.

PART II. PROBLEMS OF DEFINITION AND PRACTICAL ADMINISTRATION

16. As a matter of practical administration, rules on payment of benefit must be such as to avoid the necessity for local DHSS offices to be required to exercise any significant degree of discretion in their day to day operations. A strike throws a very heavy burden of potential claimants onto DHSS offices in a particular area and, although special offices are established (primarily to protect the interests of non-strike claimants), the more complicated the rules, and the more discretion has to be exercised, the more likely is a breakdown of the system and of adverse publicity in 'hard cases'. This fact has particularly important implications for the way 'hardship' cases are dealt with (see paragraph 24 below).

Distinguishing between Unionists and Non-Unionists

17. In order to apply financial pressure to unions through the Sup Ben system while sparing the non-unionist it would be necessary for the local offices of the Department of Health and Social Security to be able to distinguish between members and nonmembers of

trade unions.

18. Officials consider that 'union members' could be defined for the purposes of Sup Ben in a manner which would be reasonably workable. The onus would be on the claimant to prove that he was not a union member, not on the benefit officer that he was. A union member would be committing fraud if he signed a statement for benefit purposes that he was not a member. The definition would be in regulations, so it could be rapidly amended in the light of any union attempts to get round it. Annex 6 discusses possible definitions of union members which should be sufficient to allow decisions by local benefit officers. Although couched in terms of deeming it could apply also to other options.

Distinguishing between 'strikers' and those 'locked out' etc

19. The law on entitlement to benefits needs to be interpreted quickly and consistently in a vast number of individual cases. Industrial disputes, on the other hand, are rarely simple, and the precise motivation of the different parties may be very difficult to decide.

20. As a matter of practicality it has therefore been established, since 1911 when the rule was introduced, that the 'striker' who is debarred from benefit is anyone who is without employment because of a trade dispute at his place of work unless he can prove that he is not participating in, or has no interest in, the dispute. Annex 1 gives the position in more detail.

21. The practical implication is that there is no distinction in the effects of a strike and a lock-out, and a man whose wages are linked to the dispute is debarred from benefit whether or not he is willingly supporting the dispute, or is merely laid off because of actions by others. We believe that no practical method could be found of distinguishing between the 'guilty' and the 'innocent', and thus this fact must inevitably have an important bearing on the choice of options for changing the present arrangements to the disadvantage of trade unions.

Distinguishing between 'official' and unofficial' strikes

22. Just as trade unions can be expected to argue that it would be unfair - and potentially very disruptive of their organisations - to saddle them with financial responsibility for their members in the event of a lock-out (which they would claim that some employers would exploit as a method of denuding unions of funds) so they may be

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expected to argue that they should not be held financially responsible for the consequences of unofficial strikes over which they have no control (and which might be used by militants for similar disruptive purposes). However, it is essential that it should not be possible for unions to evade any additional financial responsibility for supporting strikers and their families by the simple expedient of refusing to declare a strike official. In any case it is impossible to distinguish between different kinds of disputes for Sup Ben purposes (see paragraphs 19-21 above).

The Legal Status and Administrative Competence of Trade Unions

23. The legal status of trade unions is discussed in Annex 5. Some of the options we discuss later in our report involve placing additional administrative burdens on unions. In considering them it has to be remembered that the administrative competence and machinery of individual trade unions varies very widely indeed. Some, especially the large manual unions like the GMWU and the TGWU, are at present wholly incapable of managing anything but the simplest of administrative functions. Any change would take time. This is a fact which has to be borne in mind especially where the welfare of women and children is at stake.

PART III. HARDSHIP

24. The concept of 'hardship' crops up at intervals in our Report and the treatment accorded to it has a considerable bearing on the public acceptability of any new arrangements. Two kinds of hardship can be distinguished: that which arises from factors extraneous to the industrial dispute and that which flows from the dispute itself. The former - hardship caused by "fire, flood, burglary, or comparably severe circumstances unrelated to the strike" is a familiar concept to DHSS offices and is, we presume, to remain unaffected by any change in the financial arrangements affecting strikers and their families. The other, more generalised concept of hardship, arises simply because for one reason or another the income of families affected by an industrial dispute falls below the minimum standard needed to maintain the individuals concerned. The basic supplementary benefit standard is regarded as adequate to maintain people for a substantial period.* Because strikers' families can postpone some expenditure, it is reasonable to say that a lower level is appropriate for them.

*Discretionary additions are made for diets needed on medical grounds, and for heating if the health of a dependant would otherwise be at risk.

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But they are already £15.05 below their normal level. The striker himself is excluded from benefit but will still be drawing on the family resources, notably food. It is a matter of judgement how far below this reduced level it is practicable to go without proliferating cases of hardship.

PART IV. SIZE OF FINANCIAL DEDUCTION

25. In considering the size of penalty/payment to be used in any new arrangements Ministers have so far, in the context of the "deeming" discussion taken a figure of around £10 a week as an illustration. There is no objective way of arriving at a precise figure but the choice of £10 was influenced by the present level of Sup Ben reduction in respect of the striker himself (£15.05) and the level of strike pay currently paid by some unions. £10 a week compares with the average current level of Sup Ben actually paid to strikers' families of £17.40 a week in 1979, and about £22 in the current steel strike. Ministers envisaged that the figure finally decided upon would be indexed. A further possibility would be to start at say £10 but to announce an intention of progressively raising the level in real terms until it reached the Sup Ben level, so that the full cost of supporting their members would fall on the unions.

PART V. POSSIBLE OPTIONS

26. In this section of our report we have attempted to identify a comprehensive range of options. Some would apply pressure on unions directly. Others would mainly affect the position of individuals, and thus apply pressure on unions only indirectly through their membership. It should be stressed that not all of these options are mutually exclusive.

OPTION A

Legislate to say that neither strikers nor their families are eligible for social security benefits, (nor local authority support.)

27. This would follow the apparent position in some other countries. But it would remove entitlements extending back to the 19th century and would run head on into the problems, including the problems of

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definition, we have discussed above. Even if the will to help their members were there, many unions would be incapable of organising it effectively; and most would repudiate any obligation in respect of lock-outs and unofficial strikes. Thus, although the Government might argue that the responsibility lay with the unions, it would, in practice, find itself under great pressure to provide a safety net as cases of severe hardship resulting from the strike came to public notice. Moreover, there would be no source of support at all for the non-unionist caught up in a dispute unless the rules distinguished between striking unionists and striking non-unionists - in which case the unions would argue that the object of the exercise was not to redress the balance but to destroy them.

28. Unless the local authorities were also absolved of their legal obligations much of the pressure of claims for support of children would descend on them. They are not staffed for this type of load, and could be swamped. They would in general bitterly oppose such a role, although a few politically motivated authorities might exploit it.

29. Because the political pressure arising from the first group of hardship cases would be intense, the unions might well take no action to meet their new responsibilities in the belief that Government would not be able to sustain its position.

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Option B

Legislation that unions should assume responsibility for all financial support for striking members and their families - but that the Government would, on application, lend them the money to meet this obligation.

30. This option would focus responsibility on the trade unions and remove the objection that they "could not afford to support their members". It leaves it to their discretion how much they pay and to whom, providing them with an incentive and a weapon to discourage unofficial strikes. In the great majority of cases, trade unions would be unlikely to resort to loans from the Government, preferring to rely on their own resources. Where loans were taken, they could be limited to an estimate of the amount needed for the equivalent of Supplementary Benefit payments - or by a stricter criterion. But there would be dangers. Thus -

a. The unions might use some of the money to finance strike action, but the need to repay the loan with interest would inhibit this.

b. A few unions might have inadequate assets to back a loan - or might so arrange their affairs. If they were allowed to borrow without security, the loans might not be repaid. However, there is no legal obstacle to suing a union for recovery of a loan freely entered into. Those who refused to repay would incur unpopularity and obviously not qualify for further loans.

c. Many unions would at present make a mess of the operation through incompetence or inadequate administrative resources. However, given time to prepare for the change of regime, their members could reasonably expect unions to make the necessary preparations before calling strike action. They could also take steps to adapt their arrangements to their administrative capacity - eg lending money to hardship cases only. However, if they failed, resulting extreme hardship cases would fall on either the Government or the local authority.

31. Under this option non-unionists would obtain support from normal Sup Ben -which would in equity need to be made repayable to the Government, to parallel the repayable loans to unionists through their unions.

Option C

A legislative requirement that unions should pay strike pay, at some specified minimum level

32. If it could be made effective this option would place a direct and substantial burden on unions from the outset of a strike and would avoid penalising non-unionists - because full Sup Ben would be paid where there was no entitlement to strike pay. But it would run into at least three major problems -

a. Because the law could not distinguish between official strikes, unofficial strikes and lock-outs, the unions would claim that the arrangement was both a militants' charter and an invitation to employers to engage in lockouts. It can of course be argued that a lock-out is only the mirror image of a strike and that the obligation of a union to its members are the same in either case; and the control of militants and unofficial strikers is a problem of internal union discipline which unions ought to be prepared to tackle. But there is no doubt that official union opposition to changes of this kind would be intense.

b. It might not work because union members generally would be reluctant to sue their union if it failed in its duty to provide strike pay. Indeed if it were introduced in the face of union opposition the unions might well try to encourage a self-denying ordinance to that effect.

c. If the unions did default the Government would have no option but to provide a safety net for hardship cases. It might then come under strong pressure to sue the unions for recovery of the payments which it was their statutory obligation to make.

Option D

Government pay Sup Ben as now, but charge the cost to the unions

33. This option would avoid the problem of unions' incompetence. It would also place the cost of maintenance squarely on the unions' shoulders at least as far as their own members were concerned. However there would be the problem of extracting the money from them - vide the controversies under the 1971 Act when NIRC attempted to extract money from unions. Money to non-unionists would again in equity need to be made repayable.

Option E

Government to pay Sup Ben as now but in the form of recoverable loans to the individuals concerned.

34. This option would avoid direct action on the unions. It would ensure that strikers and their families were not allowed to suffer hardship during the strike, but would make it clear that they themselves - not the State - were expected to meet the cost of their maintenance. Main legislation would be needed. There is a precedent in that recovery procedures already exist for supplementary benefit paid during the first fortnight back at work after a strike pending receipt of first wages. Recovery is by deduction from wages by the employer over 10-14 weeks, subject to the employee being left with a minimum level of earnings. If the sums to be recovered were greater, a longer period might be necessary.

35. This option would not necessarily ensure that unions bore more of the cost of strikes. It might, however, be expected to create greater pressure from member's on their unions to pay strike pay and thus reduce the individual members need for a loan of supplementary benefit. Whether or not this was a result, recovery should in any case act as some deterrent to claiming benefit during a strike. A recovery rule would involve no differentiation between unionists and non-unionists, unless it were decided to recover money from unionists only.

The arguments against recovery are as follows -

a. Recovery would cause unwelcome extra work both for DHSS local offices and for the employer. The present recovery rules for benefit paid after return to work cause a fair amount of work even though only a week or two's benefit is involved in each case. Even though there would be less benefit claimants in total, the added work on account of the greater numbers from whom recovery was needed, and the greater amounts of money to be recovered, would be considerable. There would be complications if the employee became unemployed or sick, or changed his job; or if another strike began before recovery in respect of the first was complete. Enforcement would be difficult in industries with a volatile labour force, such as the building industry. If an employer refused to make the deductions, the only sanction would be court action.

b. Recovery might well prolong any ill-feeling caused by the strike. It would be a reminder on the payslip for weeks and might itself become a cause of controversy, particularly if the employee's earnings were reduced for any reason over the recovery period.

c. Recovery would not ensure that the striker himself met the cost of the supplementary benefit. The payment by the employer of a special lump sum might well become a standard demand as part of the strike settlement. It is conjectural whether this would tend to shorten or prolong particular strikes. (Such a "bonus" to meet mortgage, hire purchase, etc, debts is not unknown in strike settlements at present.)

Option F

Defer tax refunds to the end of the strike (or the end of the tax year); perhaps also make supplementary benefit for strikers' families taxable

36 E Committee has already decided upon the taxation of short-term benefits received by the unemployed (E(80) 2nd Meeting), but have left open the question whether these decisions should apply to strikers. The effect of the decision on the method to be used for the taxation of benefits to the unemployed is that the application of tax to benefits paid during unemployment (whether a deduction or a refund) will be deferred until return to employment (or until the end of the tax year if sooner).

37. As an option which could be used in parallel with others this decision could be extended to those on strike with the consequence that Sup Ben for strikers' families would be taxable on the same basis as for the unemployed (ie excluding child etc additions) and that refunds would be deferred until return to employment (or the end of the tax year). This might be held to conflict with a statement made by the Prime Minister (in a television broadcast in January 1979) during a discussion on the financial position of strikers, when she said "I'm not going to pass legislation on tax rebates-employer have the choice". It is not clear how far this should be interpreted as a commitment particularly as the scope for employers to defer rebates is in practice very limited. It could in any case be argued that it should be interpreted as ruling out legislation on strikers' rebates in isolation, rather than as ruling out any legislative changes in the treatment of strikers' rebates in a wider context (eg either flowing from measures to bring strikers' benefits into tax, or forming part of wider measures to defer tax rebates for the unemployed generally as a result of bringing their benefits into tax). There would still remain a problem on how to handle those strikers who do not claim Sup Ben, since they would under the present legislation still be entitled to early refunds either from their employer or from the Inland Revenue. New legislation might be enacted to bring them into line.

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38. If tax refunds were deferred, and if there were no other changes in the Sup Ben entitlement of strikers' families, those who do receive Sup Ben during a strike would receive more than they do now, since additional Sup Ben would be needed to compensate for the temporary absence of tax rebates. At the end of the strike the Sup Ben received would attract tax: but even so, since in most cases a net rebate would be payable at the end of the strike, the total amount of benefit-cum-rebate would be more than it is now.

39. Some of the changes in the Sup Ben arrangements considered in this report (viz Options A and B) would remove this problem, since they entail removing strikers' families entitlement to Sup Ben. In the others however this problem would remain, though in principle adjustments in the "disregards" (Option G), in "requirements levels" (Option H), or in "deemed" strike pay (Option I), might be calculated in such a way as to offset the extra amount of Sup Ben arising out of the deferment of tax refunds.

Option G

Reduce Sup Ben payments by altering 'disregards'

40. Up to £10 of income is at present disregarded in setting Sup Ben (see para 8). These disregards could be abolished and so reduce the amount of Sup Ben paid. But apart from strike pay all the other disregards were introduced for a purpose, eg to encourage self-help, and they apply to all Sup Ben recipients, not merely strikers. Action against strikers alone would single them out from other recipients and would affect only the minority of strikers who claim Sup Ben. Nevertheless, action here is possible if the element of discrimination were acceptable. Because the disregard on miscellaneous income is usually used up by tax refunds, so that strike pay is already taken into full account for most strikers, the impact of the measure would affect both unionist and non-unionist equally. It would provide no encouragement for unions to increase strike pay, and it would still be necessary to find out who was receiving strike pay.

Option H

Reduce Sup Ben by reducing 'Requirements Level'

41. It is possible to argue that loss of income by strikers is a 'self-inflicted wound' which should be reflected in the amount of support made available. One way of doing this would be to reduce the 'requirements level' by an arbitrary figure. But this would imply that strikers families 'need' less money in total than other people, which is difficult to argue, - although strikes are a short term problem. Because it would not be possible to distinguish between the willing striker and the unwilling victim, i.e. to distinguish between strikes, lay-offs and lock-outs, there would be particular complaints from people who felt unfairly penalised. It would also be necessary to take full account of strike pay

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in settling Sup Ben entitlements, otherwise the nonunion members would be the hardest hit of all. Thus it would be necessary to distinguish unionists from non-unionists, and so it has no administrative advantage over Option I, while the presentation would be more difficult. There would be no pressure on unions to raise strike pay.

Option I

Reduce Sup Ben to UNION MEMBERS by "deeming" that they receive strike pay of £x/week, whether they do or not.

41. This option is a variant of that previously considered by Ministers, except that non-union members would not be deemed to receive strike pay. Provided non-union members can be identified (see paragraph 17 above) it would penalise the unionist vis-a-vis the non-unionists, - which could lead the unions to argue that it is an anti-union measure. It would apply to unofficial strikes and so would discourage them. By specifying a specific figure it would impose a moral pressure on unions to raise strike pay to the 'deemed' levels. It would be necessary to allow unions time to bring their rules into line. One variant would therefore be to announce the Government's intention to introduce deeming legislation by a specified date unless in the interim the trade unions took steps to raise their strike pay to the deemed level.

Option J

Reverse the change in the Employment Protection Act 1975 which widened the qualification for unemployment benefit

42. This option, which could be used in parallel with others, might be used to intensify pressures by individual members on their unions. The Employment Protection Act 1975 widened the qualification to receive unemployment benefit to union members laid off work as a result of a strike at the same place of work (see Annex 1). This provision came into effect in 1977. If the law reverted to its previous position in that single respect some employers have argued that greater pressures would be exerted on the union to bring strikes more swiftly to an end. Such a step would be controversial. The pros and cons are set out fully in paragraphs 983 to 991 of the Donovan Report, but action could be justified along the lines of the argument in the minority report on that matter.

Option K

Threaten action and hope unions will take steps to put their own house in order.

43.^(a) None of the options is without some difficulty, but some would be very unwelcome indeed to unions. If Government encouraged public discussion about the small contributions unions currently make to financing the strikes that they call, and threatened legislation, public pressures - not least from unionists who feel that others

L. (a) PRAYER.

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are doing better -might encourage an increase in the average level of strike pay. But the unions might judge that the Government were in difficulty in framing any suitable measures, and might sit back to await developments.

PART VI. SUMMARY OF OPTIONS

44. The main features of the different options are summarised in the Table overleaf. There are two (G-alter disregards and H-reduce requirements level) which apply no pressure on unions to increase strike pay - and so they fail to meet the main objective, although they would penalise strikers. The "direct" options (A-D; placing legal obligations on unions) all face the difficulties of - intense union opposition; union administrative incompetence, which could prevent Government disengaging from hardship problems; and difficulty in extracting money from unions. Making Sup Ben repayable (E) would apply indirect pressure, but might prolong the bitterness of the strike for a long period. The action to defer tax-refunds (F) could react preversely on Sup Ben entitlements in the absence of specific changes to prevent its doing so. "Deeming" for union-members (I) is probably workable but the unions will do their best to make it difficult. Altering unemployment benefit qualification (J) reverses a change for which there was fairly general consensus support at the time. Option K - threaten action and wait - seems unlikely to have much effect.

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OPTION	PRESSURE ON UNION FUNDS	NEW GOVERNMENT SAFETY NET ON HARDSHIP	NEED TO DISTINGUISH UNIONISTS - NON UNIONISTS	RELATIVE EFFECT ON UNIONISTS - NON UNIONISTS	OTHER COMMENTS
A. Withdraw Sup Ben from strikers	Indirect	Needed	No	No source of support for non-unionists	Intense union opposition. May take no action, to ensure "hardship" pressure remains on Government. Might encourage union membership
B. Unions to support members with loans on request	Direct	Needed	Yes	Same - if Sup Ben made repayable	Loans would lack proper security. Unions might default. Might discourage union membership unless Sup Ben repayable.
C. Strike pay at specified level to be a legal duty on unions.	Direct	Not needed - Sup Ben as now	Yes. Unions might try to evade their responsibility by a restrictive definition of "member".	Same - strike pay would reduce Sup Ben	Open-ended obligation on unions in lock-outs and unofficial strikes. Union members might agree not to claim their entitlement.
D. Pay Sup Ben and charge to unions	Direct	Not needed - scheme would provide for Sup Ben, as now	Yes	Same - if Sup Ben repayable	Problem of extracting money from unions. Disputes about whether payments were legitimate. Open-ended obligation on unions including lock-outs and unofficial strikes. Might discourage union membership unless Sup Ben repayable.
E. Sup Ben recoverable from individual strikers.	Indirect	Not needed - Sup Ben as now	Yes - but easy, unless Sup Ben <u>not</u> recoverable from non-unionists	Same - unless choose to distinguish	Large sums involved. Long repayment would prolong bitterness. Administrative burden. Employer might be forced to foot the bill.
F. Defer tax refunds	Indirect	Not needed - Sup Ben as now Probably increase in claimants.	Yes	Unmarried non-unionists hit hardest since no alternative source of income	Total Exchequer cost greater if no decrease in strikes, since more Sup Ben would be paid, and would not be recouped. Could combine with other options.

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G. Reduce disregards on Sup Ben.	None	Not needed - Sup Ben as now.	Yes - to establish receipt of strike pay.	Same	No incentive for union to increase strike pay. Treats strikers (including those laid off or locked out) more harshly than other Sup Ben recipients. Could combine with other options.
H. Lower Sup Ben Requirements Level for strikers.	None	Un certain -Puts income below acknowledged "hardship" levels.	Yes to establish receipt of strike pay.	Same	Presentation fairly difficult - is the short timescale sufficient argument to say that strikers <u>need</u> less money intotal than others? No incentive for union to increase strike pay. Treats strikers (including those laid off or locked out) more harshly than other Sup Ben recipients
I. "Deem" union members get £x strike pay.	Indirect	Not needed provided sum "deemed" is not too great	Yes - unions may try to make difficult.	None - if unions pay strike pay at deemed level	Applies specific moral pressure on union. Problems are administration - probably practicable but difficult; may discourag union membership
J. Change dis-qualification for unemployment benefit when laid off.	Indirect	Not needed; Sup Ben as now - probably more claimants.	Yes - since determines disqualification	Non-unionist better off than unionist	Reverses a measure adopted in 1975 to improve "fairness". Can be additon to other options.
K. Threaten Action, and allow time for unions to act voluntarily.	Indirect	Not needed	No	Same	Doubtful that unions will act, particularly if they see the difficulties the Government would face in legislating

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* It is assumed throughout that "hardship payments" arising from factors extraneous to the trade dispute - fire, flood, etc - would be payable to all as at present. The "hardship" here considered is that arising from lack of income attributable to the trade dispute.

STRIKES, LAY OFFS, LOCK OUTS

1. A person is disqualified from receiving unemployment benefit or supplementary benefit for himself if he is without employment because of a dispute at his place of employment unless he can prove that he is not participating in, or directly involved in, the dispute. The onus of proof is on the claimant. He can, however, claim supplementary benefit for his dependents.
2. Disqualification covers employees "locked-out" by the employer as well as those on strike, and has done since the rule was introduced in 1911. In practice it would be very hard for the adjudicating authorities to distinguish between strikes and lock-outs. Often the causes of a dispute are complex and stretch far back into the past. Investigation could be very time consuming and to pass judgements about the justification of a dispute might cast doubt on the neutrality of the officials concerned.
3. Disqualification also covers people who are "laid off" in the same works, if they have a direct interest in the outcome of the strike (eg their pay is linked to that of those on strike and the strike is over pay). People laid-off who are not participating or directly interested in the strike can get unemployment benefit in the normal way.

Section 111 of the 1975 Employment Protection Act

4. Before the implementation of section 111 of the EP Act, in February 1977, workers at the place of work where the strike was taking place were also disqualified from receiving unemployment benefit if they were held to be "financing" the dispute which had caused the strike, (ie members of the same union as the strikers) or belonging to the same 'grade or class' of workers as those who were taking part, financing or directly interested in the strike.
5. The Donovan Commission recommended that the 'grade or class' disqualification should be removed on the grounds that the reasoning and assumptions underlying the provision (that members of a grade or class had a community of interest apart from their position in relation to a trade dispute) were invalid, that the provision had capricious results, and that its abolition would not have the consequence of allowing unemployment

benefit to large numbers of undeserving cases. A majority of the Commission also thought that the 'financing' disqualification should be removed on the grounds that it could give rise to anomalies (by penalising union members in the place of work where the strike was taking place, but not those at other places of work), that it could be evaded by workers resigning from the union in order to claim unemployment benefit, and that it would encourage unofficial action (which is not financed by the union). It was also thought difficult to sustain the theory that individual members must be regarded as automatically involved in union decisions if and when unions were given corporate status (Donovan report paras 987-990).

6. The dissenting member of the Donovan Commission thought that the 'financing' disqualification should continue because it was important that all members should bear a measure of individual responsibility for union actions and that they should in particular accept full involvement in strike decisions at their place of work. It also thought that to remove the disqualification would lessen the incentive for trade unionists to participate actively in the affairs of their unions (Donovan report para 991).

7. There is a case for the reinstatement of at least the 'financing' disqualification, since the EEF have quoted an example of a strike where pressure from laid-off workers on strikers to go back to work has been reduced as a result of Section 111. There is no precise information about the total numbers affected by Section 111, but it seems that there have been more appeals to the national insurance adjudicating officers for the disqualification to be lifted than before 1977 (when Section 111 came into effect) and that the number of successful appeals is increasing. This would seem to suggest that the change in the law has had some effect to reduce the loss of income among workers laid off.

Unionists and non unionists

8. It is not possible to say what proportion of unionists and non-unionists go on strike. It is worth noting however, that although less than half the workforce are in trade unions long strikes tend to be in unionised sectors, because of problems of financing and organisation.

1. Duration of Strikes 1976, 1977

<u>Period</u>	<u>Cumulative %</u>
Less than 1 day	18.4
Less than 1 week	65.3
Less than 2 weeks	83.3
Less than 3 weeks	89.8
Less than 4 weeks	93.3
Less than 6 weeks	96.5
Less than 10 weeks	99.0

2. Supplementary Benefit Claims

% of all strikers

	<u>Eligible* to Claim Benefit</u>	<u>Received Benefit</u>	<u>% of those eligible who received benefit</u>
1960-70	8.0	1.3	16
1970-74	32.0	8.0	25
1975-77	26.3	3.4	13

Source: Management Information Sheet No 58 British Institute of Management Foundation

*Eligible means all strikers (married or single) in the third or later weeks of a strike

UNION	Notice union must give to expel member	Frequency of Contribution	Definition of Contribution	No. of weeks of arrears allowed before		TOTAL INCOME (INCOME FROM MEMBERS 1977 - £'000s)	WEEKLY STRIKE union may resolve to pay other amounts at the time of a strike
				(a) losing strike pay	(b) forfeiting membership		
AUEW	3 meeting nights	weekly	none	8 weeks	26 weeks	13,963	£9 p.wk.
TGWU	Not Specified	weekly	paying contribution and abiding by rules	13 weeks NB benefit only paid after 26 weeks's membership	13 weeks	21,673 (19,371)	£6 p.wk. 26 week qualification period for strike pay
GMWU	"	weekly	none	6 weeks	26 weeks	11,982 (10,748)	£10.50 p.wk. Payable for up to 10 weeks
NUM	"	weekly	none	8 weeks	8 weeks	7,619 (6,204)	None payable
NUR	"	weekly	none	8 weeks	8 weeks	5,274 (3,334)	£5 p.wk.
COISE	2 weeks + then appeal	weekly	paying contribution	3 months	3 months	2,115 (1,983)	Not specified
NAIGO	6	monthly	paying contribution	as prescribed by conference		11,279 (9,376)	Normally 55% gross pay
NUPE	6	weekly	none	13 weeks	6 months	7,504 (6,416)	£5 p.wk. 13 week qualification period, but may be waived
NGA	6	weekly	none	4 weeks	4 weeks	2,786 (1,990)	Payable at $\frac{1}{3}$ the minimum grade rate of the branch concerned
EEPTU	Not specified	weekly	none	5 weeks	26 weeks	4,271 (3,786)	£15 p.wk.
USDAW	"	weekly	none	10 or 9 weeks [†]	13 or 26 weeks [†]	4,578 (3,966)	£6 p.wk.
				[†] according to original membership of constituent unions			
Iron and Steel Trades Confederation	7 days notice to appear before executive to appeal against decision	weekly	Effectively someone who pays a subscription	26 weeks or earlier if takes second job	26 weeks	2,277 (1,542)	Payable at a rate equal to the amount of ub payable under NI to a single man at the time that payment under this rule is authorised
National Union of Blastfurnace-men Ore Miners Coke Workers and Kindred trades	6 weeks	Weekly	Where a person had made application and paid the entrance fee	1 quarter or more	26 weeks	225 (189)	Rate of payments is liable to Executive Council discretion

PRACTICE IN OTHER COUNTRIES

WESTERN EUROPE

1. Of Western European countries, Austria and Germany allow strikers to qualify for contributory benefits. So does Belgium in the rare cases where an employer fails to observe agreed disputes procedures.
2. Unlike supplementary benefit in this country, social assistance schemes in Europe are not commonly national schemes but are run by local authorities, with a good deal of variation and local discretion in interpreting "need". The general position, however, is as follows. In Sweden, Norway, and Denmark means - tested assistance can be paid both for the striker and for his dependants. Repayment of assistance may be required in Sweden and Denmark. In Holland assistance can be paid for dependants only, but in practice payments are rare because strikes are short and the unions pay strike pay. In Belgium, France, Greece, Italy, Portugal and Spain neither the striker nor his dependants qualify for assistance. Strikes tend to be short, and strikers get support from unions, relatives, other workers or special solidarity funds. The position in the Irish Republic is similar to that in Great Britain.

AUSTRALIA AND CANADA

3. Neither unemployment benefit nor social assistance is paid for strikers or their families in Australia. The same is true of Canada, except that provincial welfare assistance may be paid if the strike is a long one and there is particular hardship such as losing the home.

UNITED STATES

4. Railway workers on strike qualify for unemployment insurance, but otherwise strikers qualify in only 2 states, and then after only several weeks waiting period. Some states pay to workers locked out, but lock-outs are rare.
5. Of the 3 general schemes of means-tested assistance, strikers in all states can qualify for food stamps, a federally financed scheme. Stamps are sold at a discount on face value according to family size and net income. In about half the states strikers can also qualify for the state-run Aid to Families with Dependent Children. There is a 30-day waiting period. The state-or-county-run general assistance scheme (the equivalent of supplementary benefit) is also available to strikers in most states. It is used to cover the waiting period just mentioned or to pay benefit where strikers are not eligible for other benefits.

THE LEGAL POSITION OF TRADE UNIONS

1. Under section 14 of the Trade Union and Labour Relations Act 1974 trade unions have immunity from actions in tort unless the tort is committed other than in contemplation or furtherance of a trade dispute and it causes personal injury or is connected with the ownership of property. Trade unions can be sued in contract and for breach of a specific statutory requirement.
2. Hence under the law as it is now a trade union which failed to comply with a specific statutory requirement to pay strike pay to its members would be liable to be sued for breach of that statutory requirement by members to whom no such payments were made. If the Government anticipated that union members would be so opposed to such a scheme that they would deny themselves their right to strike pay, it would be possible (although totally unprecedented) to make non-payment a criminal offence.
3. Again under the law as it is now, if a union accepted a loan from the Government it would open to the Government to sue for repayment of the money lent.
4. Finally, if a union was to be charged for the total Sup Ben paid to its members during a strike there would have to be a statutory requirement to that effect. The procedure for payment and ascertaining the amount and sanctions against non-payment would have to be laid down in statute. Where a union failed to pay the amount required by a court various common law remedies would be available eg: sequestration of goods.

"Deeming" that unionists receive strike pay, and nonunionists do not.

1. "Deeming" non-unionists not to be receiving strike pay would incur the risk of -
 - a. individuals fraudulently claiming not to be union members in order to escape the "deeming" procedure;
 - b. trade unions devising stratagems to enable all or some of their striking members to obtain benefit without committing an offence;
 - c. some individuals receiving neither strike pay nor supplementary benefit.
2. As to a., DHSS do not believe there would be large numbers of fraudulent claims. Sup Ben entitlement does not usually arise until the third week of a strike and long strikes tend to be in heavily unionised sectors where there is often a "check off" system of collecting union dues operated by the employer or a closed shop. DHSS staff already have to ascertain whether or not an individual is receiving strike pay when assessing title to benefit (although currently they often have the voluntary co-operation of unions in doing this, a co-operation which would presumably be withdrawn if a deeming procedure operated). In practice most claimants would be reluctant to sign false declarations about union membership and receipt of strike pay. Moreover, the onus in cases of doubt would be on the claimant to prove that he was a non-unionist.
3. As to b., unions might attempt to evade a deeming scheme by changing their rules, for example -
 - i. to allow strikers to forgo their subscriptions and hence their union membership for the period of the strike;
 - ii. to allow strikers to pay the equivalent of their subscriptions into a trust fund or special account not directly associated with the union but to which it would have access at a later date.
4. DHSS suggest that the scope for evasion could be minimised through the regulations under which the deeming procedure operated. Subsequent changes in union rules or practice, aimed at evading the regulations, could be countered by changing the regulations. This would take 4-6 weeks (under the negative resolution procedure).

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5. The main difficulty in drafting regulations would be defining "trade union member" (and hence also of avoiding the problem of c.). There is no definition of trade union member in law and no standard definition in trade union rules books. One way round this might be to say (as some unions already do), that a union member is someone who has paid a subscription, but there would be considerable difficulty in taking account of the great variety of union rules governing the number of weeks of arrears allowed before strike pay or membership was forfeited (see Annex 3). Similarly, regulations would need to pay regard to the fact that some unions (eg the TGWU) require several months subscriptions to have been paid before a member becomes eligible to receive strike pay.

6. Having regard to these difficulties, it is suggested that the best way forward would be to make evidence of union 'membership' depend on several relevant factors. Thus the regulations could state that the determining authority might treat a person as a trade union member having regard to the following factors -

- a. he has paid a subscription to his union within or in respect of the last 12-16 weeks;
- b. he is currently receiving strike pay or other benefits from a union.
- c. he is otherwise in communication with or receiving instructions from a union;
- d. he is paying a subscription into a special fund or account to which the union has or will have access;
- e. any other relevant evidence.

7. This would prevent a union allowing membership to lapse, or simply waiving the obligation to pay subscriptions, before and during a strike, with the intention of enabling its members on strike to escape the "deeming" procedure (and perhaps even to receive strike pay on the understanding that arrears of subscriptions would be paid when the strike was over). Unions would only be able to circumvent the 12-16 week rule if they could foresee accurately when a strike was due to begin and were prepared to forgo income from subscriptions at a time when they would normally be seeking to build up their funds. (The period "12-16 weeks" is suggested as an approximate average of the period of arrears allowed by unions before membership elapses. A longer period - to cover all unions' rules - would increase the risk of penalising people who had genuinely resigned from their union because they opposed its policies.

FILE

Sound vrs
Jenny

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~~B/F 11-280
for Mtg~~

cc HMT DHSS
D/I D/M
D/T CO

4 February 1980

Strikers and Supplementary Benefits

Further to Tim Lankester's letter to you of 10 January I am writing to let you know that the meeting to discuss the above subject is now going to take place at 1600 hours on Tuesday, 12 February at 10 Downing Street. The Prime Minister would like the Home Secretary, the Chancellor of the Exchequer, and the Secretaries of State for Industry, Trade, Employment and Social Services to attend the meeting and I am therefore sending a copy of this letter to their Private Secretaries as well as to David Wright in the Cabinet Office.

CAROLINE STEPHENS

Now at the
cf. 8/2

John Chilcot, Esq.,
Home Office.

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PRACTICE IN OTHER COUNTRIES

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1. Of Western European countries, Austria and Germany allow strikers to qualify for contributory benefits. So does Belgium in the rare cases where an employer fails to observe agreed disputes procedures.
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The legal position of trade unions

1. Under section 14 of the Trade Union and Labour Relations Act 1974 trade unions have immunity from actions in tort unless the tort is committed other than in contemplation or furtherance of a trade dispute and it causes personal injury or is connected with the ownership of property. Trade unions can be sued in contract and for breach of a specific statutory requirement.

2. Hence under the law as it is now a trade union which failed to comply with ^a specific statutory requirement to pay strike pay to its members would be liable to be sued for breach of that statutory requirement by members to whom no such payments were made. If the Government anticipated that union members would be so opposed to such a scheme that they would deny themselves their right to strike pay, it would be possible (although totally unprecedented) to make non-payment a criminal offence.

3. Again under the law as it is now, if a union accepted a loan from the Government it would be open to the Government to sue for repayment of the money lent.

4. Finally, if a union was to be charged for the total SB paid to its members during a strike there would have to be a statutory requirement to that effect. The procedure for payment and ascertaining the amount and sanctions against non-payment would have to be laid down in statute. Where a union failed to pay the amount required by a court various common law remedies would be available eg: sequestration of goods.

"DEEMING" NON-UNIONISTS NOT TO RECEIVE STRIKE PAY

1. "Deeming" non-unionists not to be receiving strike pay would incur the risk of:

(a) individuals fraudulently claiming not to be union members in order to escape the "deeming" procedure

(b) trade unions devising stratagems to enable all or some of their striking members to obtain benefit without committing an offence

(c) some individuals receiving neither strike pay nor supplementary benefit.

2. As to (a), DHSS do not believe there would be large numbers of fraudulent claims. SB entitlement does not usually arise until the third week of a strike and long strikes tend to be in heavily unionised sectors where there is often a "check off" system of collecting union dues operated by the employer or a closed shop. DHSS staff already have to ascertain whether or not an individual is receiving strike pay when calculating disregards (although currently they often have the voluntary co-operation of unions in doing this, a co-operation which would presumably be withdrawn if a deeming procedure operated). In practice most claimants would be reluctant to sign false declarations about union membership and receipt of strike/ pay. Moreover, the onus in cases of doubt would be on the claimant to prove that he was a non-unionist.

3. As to (b), unions might attempt to evade a deeming scheme by changing their rules, for example:

(i) to allow strikers to forgo their subscriptions and hence their union membership for the period of the strike;

(ii) to allow strikers to pay the equivalent of their subscriptions into a trust fund or special account not directly associated with the union but to which it would have access at a later date.

4. DHSS suggest that the scope for evasion could be minimised through the regulations under which the deeming procedure operated. Subsequent changes in union rules or practice, aimed at evading the regulations, could be countered by changing the regulations. This would take 4-6 weeks (under the negative resolution procedure).

5. The main difficulty in drafting regulations would be defining "trade union member" (and hence also of avoiding the problem of (c)). There is no definition of trade union member in law and no standard definition in trade union rules books. One way round this might be to say (as some unions already do), that a union member is someone who has paid a subscription, but there would be considerable difficulty in taking account of the great variety of union rules governing the number of weeks of arrears allowed before strike pay or membership was forfeited (see Annex 2). Similarly, regulations would need to pay regard to the fact that some unions (eg the TGWU) require several months subscriptions to have been paid before a member becomes eligible to receive strike pay.

6. Having regard to these difficulties, it is suggested that the best way forward would be to make evidence of union "membership" depend on several relevant factors. Thus the regulations could state that the determining authority might treat a person as a trade union member having regard to the following factors:

(a) he has paid a subscription to his union within or in respect of the last 12-16 weeks;

(b) he is currently receiving strike pay or other benefits from a union;

(c) he is otherwise in communication with or receiving instructions from a union;

(d) he is paying a subscription into a special fund or account to which the union has or will have access;

(e) any other relevant evidence.

7. This would prevent a union allowing membership to elapse, or simply waiving the obligation to pay subscriptions, before and during a strike, with the intention of enabling its members on strike to escape the "deeming" procedure (and perhaps even to receive strike pay on the understanding that arrears of subscriptions would be paid when the strike was over). Unions would only be able to circumvent the 12-16 week rule if they could foresee accurately when a strike was due to begin and were prepared to forgo income from subscriptions at a time when they would normally be seeking to build up their funds. (The period "12-16 weeks" is suggested as an approximate average of the period of arrears allowed by unions before membership elapses. A longer period - to cover all unions' rules - would increase the risk of penalising people who had genuinely resigned from their union because they opposed its policies.

Soc Secs

✓ Mr Lancaster

B
2371

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10 DOWNING STREET

23 January 1980

G D Miles Esq
Cabinet Office
70 Whitehall
LONDON SW1

Dear David,

OFFICIAL GROUP ON BENEFITS TO STRIKERS

I have agreed with Clive Tucker that I should forward a draft description and commentary on Option (b) required at paragraph 5 of the draft outline report that you circulated. Although this draft takes account of some points that Clive has made to me in an earlier version, we have not had time to agree it and I know he would place a quite different emphasis on many of the points.

I am copying this letter to Clive Tucker (D.Em), and to Tony Lane (Trade), since this proposal bears a close resemblance to that contained in his letter of 21 January.

Yours sincerely

Andrew

ANDREW DUGUID

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OPTION (b): TRADE UNIONS TO PROVIDE FINANCIAL SUPPORT FOR STRIKERS AND DEPENDANTS, WITH REPAYABLE LOANS AVAILABLE FROM GOVERNMENT IF REQUIRED

1. This option involves:

- (i) Withdrawal of the present entitlement to SB for strikers' dependants.
- (ii) Increased union responsibility for the welfare of members on strike.
- (iii) Government willingness to provide loans to unions, within a maximum calculated according to the total per capita SB entitlement of all the striker's dependants concerned. When a union took advantage of this facility, it would agree to repay the total loan, with interest at commercial rates, within a fixed period (eg one year) of the end of the strike.
- (iv) The small minority of non-union strikers who claim SB would be able to apply direct to DHSS for a recoverable loan.

2. The advantages of this arrangement are that the Manifesto objectives of discouraging strikes and making unions bear their share of supporting their members on strike would be achieved. By making loans available, the Government could not reasonably be accused of abandoning all concern for the position of families in hardship, but the focus of responsibility for action in individual hardship cases would shift to the trade unions. Since the loans would be fully recoverable, the taxpaying majority is no longer obliged to help finance strikes.

3. The success of the Government's objectives would not depend on union co-operation in these arrangements. Provided the Government could make clear its willingness to provide loans and could command general public support for its position (for which there is plenty of evidence) it would be the unions who would come under pressure from their members - and from public opinion generally - to make adequate arrangements for avoiding hardship. To the limited extent that SB is a source of income for strikers, there would be increased pressure from members on their unions for strike pay. The unions' increased

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responsibilities under this option would provide them with a stronger incentive than at present to discourage unofficial strikes. The arrangements would also equip them with a basis for controlling their members rather more effectively - ie by refusing to provide unofficial strikers with strike pay or hardship allowances if they wished. This discipline would be entirely at their discretion; the Government would be willing to provide loans to them for either official or unofficial strikes.

4. It seems likely that most unions would only want to borrow money from the Government in the last resort, preferring to rely on their own funds for hardship payments as well as strike pay, and seeking to blame the Government for any well-publicised cases of hardship. The Government would, of course, need to make it clear that the remedy was in the unions' own hands.

5. The possible drawbacks to the scheme are as follows:

(i) Where unions decided to take up the Government's offer of a loan, there would be some difficulty in determining its size. Most strikers entitled to claim SB for their dependants do not do so at present, so a loan based on a rough estimate of maximum entitlement would exceed expenditure under current arrangements. Since most unions would be unlikely to draw on the facility - and since the loan would be recoverable - there should be a net saving in public expenditure. However, there would be an opportunity for a union to temporarily improve its cash flow position, increasing their ability to sustain a long strike. This position obtains already in the sense that large trade unions are free to borrow money from non-Government sources to finance a strike. In practice, one would expect unions to continue to be reluctant to build up large amounts of debt which it would be painful to repay later.

(ii) Trade unions have only limited administrative capacity at present and would be quite unable to operate a system which assessed individual need as accurately as DHSS. Under pressure from their own members and public opinion, it would be for them to find a solution to this problem. One obvious solution would be for them to lend hardship

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money to those of their members who came forward to claim it. Since only a minority claim SB from DHSS at present, when it does not need to be repaid, the number who would seek to borrow it would be considerably less. This would reduce the size of the administrative problem. If, however, unions decided to share out all the money they borrowed and recover it later from general subscription, this would present no greater difficulty than their present arrangements for strike pay.

- (iii) There would be a need to distinguish the small minority of non-union strikers, who would be eligible for SB as a recoverable loan from DHSS. They would need to sign a declaration to the effect that they were not trade union members. Since the money would need to be repaid, there would be no strong incentive to make a false declaration and no very serious consequence if a small number did so. The number of direct claimants should in any event be too small to add a significant administrative burden to DHSS. There is a precedent for handling a small number of recoverable loans which are presently available for strikers in the first few weeks of returning to work.
- (iv) A case could arise where a union was tempted to default on its obligation to repay the loan. No change in existing legislation would be needed to enable a union to be sued for breach of contract. There is a clear distinction between a refusal to repay a loan that was freely entered into and the much more difficult case of enforcing payment of damages.
- (v) To the extent that this option would be effective in making full-scale strikes more expensive and burdensome for trade unions, they may be encouraged to change their tactics and find ways of calling out only a small minority of their members. This tendency exists already and is likely to be reinforced by any measure which succeeds in making full-scale strikes less attractive. The remedy lies in changing arrangements for lay-off pay and benefits for those laid off - which are the subject of a separate paper.

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Conclusion

6. This option would meet the Government's objectives of discouraging strikes and making unions bear their share of the cost of supporting striking members. It should also increase trade unions' sense of responsibility towards their members and to provide them with both an incentive and a weapon to discourage unofficial strikes. It would be likely to encounter strong opposition from the trade unions and its success would depend crucially on the readiness of public opinion to accept that responsibility for the welfare of strikers' families should rest ultimately on the strikers themselves and their union.

ANDREW DUGUID

23 January 1980

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U. B.
L. R. B.
S. B.

Ref. A01199

PRIME MINISTER

Bringing Short Term Benefits into Tax

(E(80) 2 and 3)

Arranged
for 10.30
P.

This brief is intended to serve both for your preliminary talk with the Chancellor and for the E Committee meeting on 23rd January.

BACKGROUND

2. Originally, three papers on this subject were circulated: a note by the Chancellor (with a lengthy paper by the Inland Revenue attached); a dissenting paper by the Secretary of State for Social Services; and another one by the Secretary of State for Employment. You refused to take this hotch-potch on the Agenda before Christmas, and asked the Chancellor to try to agree a line with the two Secretaries of State. He has now done so, and his paper contains an agreed recommendation. This has, however, attracted a further paper, from the Minister of State, CSD, pointing to the high staff costs and asking that these should be fully absorbed by the Departments concerned.

3. The single main paper makes the issue easier to understand, though it is still complicated. The area of disagreement has narrowed down, and there are now four issues for Ministers to consider:

- (i) Do they accept the proposed coverage of the scheme (agreed between the Ministers concerned and described in paragraph 4 of the Chancellor's paper as supplemented by paragraph 3 of Annex A to the Revenue paper circulated with it)?
- (ii) Do they agree that the "rough and ready" solution, involving a flat rate deduction from benefit, is not politically acceptable (paragraphs 11-13 of the Chancellor's paper)?
- (iii) If the benefits are to be taxed in a formal fashion, do they agree that the "subsequent taxation" method (Method B) is to be preferred to "current taxation" (Method A)? The recommendation is for Method B because it does not involve cutting some families' current income below Supplementary Benefit level - a procedure which, under the law, would generate further claims for Supplementary Benefit.

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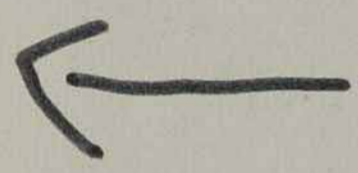
- (iv) Whatever solution is adopted, do they agree with Mr. Channon that no allowance should be made for additional staff costs in implementing the claim - or do they regard this as impracticable and the additional staff costs to be seen, therefore, as a necessary price to obtain the revenue and other benefits sought?
4. In considering these matters you will want to remember:-
- (i) That the present proposals relate only to benefits paid to the unemployed. Sickness benefit is being tackled separately.
 - (ii) The timing point. Decisions are needed by the end of this month to meet the April 1982 deadline. Even then, action in Northern Ireland will have to follow later. Legislation will be needed in the 1980-81 Session and is likely to be complicated and controversial.
 - (iii) The Chancellor refers in paragraph 19 of his paper to a cross-link with the question of Supplementary Benefit for strikers now being considered by officials and points out that there would be an appearance of discriminatory treatment if Supplementary Benefit were taxable in the hands of the unemployed but not in the hands of strikers. In fact, however, it is to be doubted whether the report on strikers and Supplementary Benefit will help very much - because it is directed at the separate problem of entitlement to Supplementary Benefit and not to tax on that benefit. The work of the Treasury group on "work incentives for the lower paid" is likely to be more relevant, but is unlikely, on present plans, to be available before February. The way out may be to ask the Chancellor to produce a separate note specifically directed to the question of how Supplementary Benefits to strikers could be brought within the tax system. It may be that the examination of this problem will reinforce the case for Method B rather than Method A (it would presumably be much easier to cope with the taxation of Supplementary Benefits to strikers in a single round-up operation at the end of the tax year than through the PAYE system as such).

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HANDLING

5. Before the meeting. You have asked to see the Chancellor privately before this paper is taken by E. In view of the consensus he has now reached with the two Secretaries of State you may feel able to endorse his, and their, preferences on the coverage of the scheme and on taxing the benefits by Method B. As in subsequent discussion in E, however, you will want to be sure that you both accept his conclusion that a reduction of benefit "in lieu of tax" is not politically acceptable, because this bears directly on Mr. Channon's manpower point (it is the one method of handling this issue which requires no extra staff). Given agreement on this the staffing implications of the proposals can be handled on their merits. The question is really whether Mr. Channon's proposal, for a nil increase in staff, is realistic; and, if not, how staff costs can be kept to a minimum. You will also want to put the Chancellor on notice that he must come up urgently with a proposal on how the Supplementary Benefits received by strikers could be taxed - to meet the inevitable questions - and to get his view on whether this consideration also reinforces the case for Method B (as it almost certainly does).

But the Chancellor is proposing to cut benefits - by 10% less than needed for full indemnity.



6. At E Committee. I suggest you begin with set-piece statements from the Chancellor, the Secretary of State for Social Services, the Secretary of State for Employment, and the Minister of State, Civil Service Department. Other Ministers will then want to join in: in particular, the Secretary of State for Northern Ireland will wish to argue the case for postponement for two years in Northern Ireland. (This is messy, but apparently unavoidable).

7. The discussion will be difficult to structure: I suggest you concentrate at the start on getting agreement on the need to tax rather than reduce short-term benefits while noting that sick pay will be dealt with separately. You should then be able to line up the majority of the Committee behind the agreed position of the Chancellor and the two Secretaries of State. That leaves the difficult manpower problem. Taxing benefits is bound to produce extra work for somebody. In the case of sickness benefits, that work will be done by the employer (at relatively little extra cost: because he has to operate PAYE already). But both Method A and Method B impose broadly similar additional

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loads on the two benefit-paying Departments and the Inland Revenue, and this is unavoidable. How far are the two Secretaries of State and the Chancellor willing to make off-setting savings elsewhere? Is a compromise possible? In any case does the Committee accept the need for some net increase in manpower (at a smaller figure than the 2,800 set out in the paper) as the price of this improvement in the work-incentive structure and the revenue gains.

CONCLUSIONS

8. You will need to frame these in the light of discussion: but you will need to cover:

- (i) the benefits to be brought into tax - unemployment benefit up to the standard rate (for single or married people, excluding child additions and other additions listed in Annex A), supplementary benefit and earnings-related supplement;
- (ii) the acceptability or otherwise of the 'reduction in lieu' solution;
- (iii) the choice of taxing method - A or B;
- (iv) the temporary omission of Northern Ireland;
- (v) timing of any announcement - before the end of January and consultations with those concerned to be done immediately;
- (vi) timing of legislation - during the 1980-81 Session of Parliament;
- (vii) a remit to the Chancellor to produce a quick note on the taxing of Supplementary Benefit to strikers - so as to be ready to answer questions on the point when the main announcement is made.

RA

(Robert Armstrong)

82-84
100-101

22nd January, 1980

Social Services

RH



10 DOWNING STREET

THE PRIME MINISTER

17 January 1980

Dear Mr. Foster,

I am most grateful to you for sending me with your letter of 13 December your paper on taxing unemployment benefits.

I have read this with great interest. Clearly, you have given a lot of thought to this matter, and we will certainly take your ideas into account in deciding how we are going to proceed.

I do appreciate your views.

Yours sincerely

Christopher D Foster Esq

Margaret Thatcher

JS

Taxing Unemployment Benefits

At one of your industrialists lunches, you asked Christopher Foster if he had any ideas on how we should tax unemployment benefit. He subsequently wrote (Flag 'A') enclosing a paper setting out his ideas. This paper suggests that we should assume that unemployment benefit is taxable income and tax it by appropriate reductions in the tax rebates now paid out after someone becomes unemployed. By contrast, the Chancellor's preferred approach (which will be coming to 'E' Committee next week) is to bring unemployment benefit within PAYE.

David Wolfson and I have discussed Foster's proposal with a senior official from the Inland Revenue, and we also asked them to take it into account in their review of the options. They have now sent their comments (Flag 'B'). They see three main objections to the proposal:-

(a) It assumes that the person who becomes unemployed would be out of work for the rest of the tax year; consequently if and when the person obtains a job, they would be "under taxed".

(b) It would impose a heavy work load on Tax Offices.

(c) It would create an added burden on employers when they take on someone who had been unemployed.

The advantage of Foster's proposal is that, on the face of it, it could be introduced in 1980/81, whereas the Chancellor's proposal could only be implemented in April 1982. On the other hand, it does seem that the objections are pretty serious, and I think it would be better to wait a little longer and get a better scheme - on the lines of the Chancellor's.

Although I acknowledged Foster's letter and said that his proposal was being looked into, I think it would be nice if you could ^{also} ~~not~~ write - since he clearly put a lot of work into his note. I attach a draft.

I should add that, when we have a final version of the Chancellor's paper for 'E', we will arrange a meeting for you to discuss it with him.

15 January 1980

[Handwritten signature]

[Handwritten mark]

see D. Wolfson
for comments



INLAND REVENUE

SOMERSET HOUSE, LONDON WC2R 1LB

TELEPHONE 01-438 6762

FROM MR J D TAYLOR THOMPSON

2.

107.

T Lankester Esq
Private Secretary to the Prime Minister
10 Downing Street

11 January 1980

Dear Lankester,

I am sorry about the delay in responding to your letter of 20 December about Christopher Foster's paper on taxing unemployment benefits.

... I enclose a Note which our people have done on his proposals and
... a draft reply for the Prime Minister's signature. While the method of taxing benefits to the unemployed is actively under consideration I do not think that the Prime Minister can be any more forthcoming. But if she wished to give Foster a fuller critique of his proposals, it would be possible to write to him again after a decision has been reached and an announcement made (probably around the end of this month), explaining why his proposals have not been followed (assuming that they are not!).

I am sending copies of this letter and enclosures to John Crawley (CPRS), Tony Battishill (Treasury) and Don Brereton (DHSS).

Yours sincerely,

John Taylor Thompson

(J D TAYLOR THOMPSON)

DRAFT LETTER FOR PRIME MINISTER TO MR CHRISTOPHER FOSTER

I am most grateful to you for sending to me with your letter of 13 December your paper on taxing unemployment benefits.

I have read this with great interest. Clearly, you have been giving a lot of thought to the matter. ~~We also have it under careful consideration in the light of our Manifesto commitment to bring unemployment benefit within the tax system. It would not be appropriate for me to comment on your proposals at this stage, but I can assure you that~~ ^{and I have enjoyed} ~~they are being taken into account in the review which we are now conducting~~ ^{your ideas} ~~is taking account of~~ ^{and} ~~you~~

~~views~~

~~I don't comment~~

~~No decision has yet been taken on how an act on going to process to into the task of bringing benefits into the tax system.~~

~~In this context take your ideas into account in making decisions on how to process.~~



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Note on Mr Foster's proposals for taxing unemployment benefits - letter to the Prime Minister of 13 December 1979

1. Before coming to the scheme with which Foster's paper is primarily concerned, we deal with the alternative approaches described in subparagraphs a to d of his paragraph 2. Both the Official Group and the outside consultants who have been studying ways of bringing into tax the benefits paid to the unemployed consider that the choice lies between a current (PAYE style) method of taxation and a subsequent method - that is, of taking benefits into account when someone returns to work. Foster clearly sees the virtues of the current method but he is right in saying this cannot be operated immediately. (It could not be brought in before 1982.) However, he is wrong when he comes to the subsequent method (his paragraph 2b) in implying that it would necessarily mean extra tax deductions on a return to work. Tax allowances available during unemployment would, in the great majority of cases, exceed the benefits brought into tax and so on return to work there would still be a refund - albeit not so large as now. Moreover, if during unemployment no tax refunds were made there would arguably be a positive incentive to return to work. This method likewise could not be implemented before 1982. Foster's third approach is objectionable because of the heavy staff cost involved in end-of-year "tidying up". His fourth approach - paying under deduction of tax, presumably at the basic rate - could only work if the deduction were treated as settling the claimant's liability. If the claimant could later claim repayment of tax by reference

i.e. pay VB
net of tax

to his total income for the year, the staff cost would be unacceptable and the unemployed themselves could hardly cope with that sort of refinement. A flat rate deduction of this kind would not have the fairness of taxation: it would be tantamount to a straight reduction in benefit regardless of total income for the year.

2. In his fifth and preferred approach, Foster assumes that, to achieve the objectives of reducing tax rebates available during unemployment and securing a reduced tax liability on return to work, a man who becomes unemployed will remain so for the rest of the tax year and his PAYE will be adjusted to take account of benefits which may or may not be paid up to the year end. It is true of course, as Foster says, that the PAYE system on occasion already takes account of future income - eg NI retirement pension - but invariably this is a virtually certain source: it would be quite different to take similar account of future benefit on an assumption that someone may remain out of work. However, if that presentational obstacle was overcome, we see very considerable problems in arriving at the amounts of benefit to be taken into account. Given the mix of benefits which may be paid to the unemployed and the variety of circumstances governing the amounts in payment - always assuming of course that the benefits are claimed - the amounts to be taken into account would have to be fixed somewhat arbitrarily. But this would cause pressures for revision, and if then one had to contend with the sort of rule Foster introduces

in paragraph 7 we could quickly get to a situation where we were having to review an unacceptably high number of cases. This would place a very heavy work load not only upon tax offices but also upon the benefit paying departments on whom we should have to rely for information. But even assuming the load upon the three departments (DHSS, DE and Inland Revenue) could be tolerated, there would be an added burden upon employers who would have to sort out a number of problems when taking on people after a spell of unemployment, in an effort to get proper cumulative PAYE going again. We feel that many, notably smaller employers, would have great difficulty in understanding what was required of them, still more in actually doing it. We are certain that any scheme of the kind Foster describes would meet strong opposition from employers' organisations.

3. We have also looked at Foster's scheme in relation to strikers. In his note he seems not fully to realise that tax refunds to strikers are paid as they are because their employers remain their employers and are therefore required to go on operating PAYE: if they refuse to do so then, under present Regulations, they must provide us with sufficient information to enable us to make the refunds in their place. In other words, we have a quite different situation from the unemployed. Moreover, he does not seem to recognise that tax refunds are taken into account in assessing a striker's resources for the purposes of a claim for supplementary benefit for his dependants. To change this system in the sort of way Foster seems to envisage - with a greater involvement by the Revenue and

DHSS - would inevitably be expensive in staff terms and would yet again place great burdens upon employers who would have to disrupt their normal working of payroll and PAYE systems for what is often a short strike.

4. In summary, although we have not looked at Foster's ideas in the sort of depth which would enable us to cost them, we are certain that they would prove expensive to departments and to employers to operate and we do not see them as providing an easy interim way of reducing the net income of those out of work.

5. DHSS may have comments on the proposals, eg in particular on paragraph 4 of Annex B.

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For Services DS

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10 DOWNING STREET

From the Private Secretary

10 January 1980

Dear Mr.

Strikers and Supplementary Benefits

When Cabinet considered the question of strikers and supplementary benefits on 20 December, it was decided that further consideration needed to be given to alternative approaches. The Prime Minister has now asked that officials should produce a paper on the various options, setting out the pros and cons of each. This work will be co-ordinated by the Cabinet Office. The paper, when completed, will form the basis of discussion by a small Ministerial meeting which she will chair - prior to further discussion in Cabinet. The Prime Minister would like the Home Secretary, the Chancellor of the Exchequer, and the Secretaries of State for Industry, Trade Employment and Social Services to attend that meeting. We will be in touch to arrange a date for the meeting in due course.

I am sending a copy of this letter to Tony Battishill (HM Treasury), Ian Ellison (Department of Industry), Ian Fair (Department of Employment), Don Brereton (Department of Health and Social Security), Martin Vile (Cabinet Office), and Stuart Hampson (Department of Trade).

Wen ew

Tim Laker.

John Chilcot, Esq.,
Home Office.

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Ref: A01049

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MR. LANKESTER

So. Service
PRIME MINISTER

Agree that
this work should be
put in hand?

John M. V. de
R
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MS
4/11

Strikers and Supplementary Benefits

When the Cabinet discussed the treatment of Supplementary Benefits for strikers' families on 20th December they decided not to proceed with the package of proposals put forward by the Secretary of State for Industry in consultation with the Chancellor of the Exchequer, the Secretary of State for Employment and the Secretary of State for Social Services. In doing so they were much influenced by the failure of that package to distinguish between trade unionists and non-trade unionists and, by implication, its remoteness from the Manifesto statement that: "We shall ensure that unions bear their fair share of the cost of supporting those of their members who are on strike". In summing up the discussion the Prime Minister said that further consideration would need to be given to alternative approaches and undertook to consider how best this might be arranged.

2. We ought now to take steps to put this further consideration in hand. My advice would be that:-

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- (a) Officials should be asked to produce a neutral display of the possibilities, setting out the pros and cons of each.
- (b) This could form the basis of discussion at a small Ministerial meeting, prior to further discussion in Cabinet. Such a meeting should, I suggest, be chaired by the Prime Minister and comprise the four Ministers involved in the earlier proposals - the Chancellor of the Exchequer and the Secretaries of State for Industry, Employment and Social Services - with the addition of the Secretaries of State for the Home Department and Trade.

3. If this proposal is acceptable, I will arrange for the work of officials to be co-ordinated from here under Cabinet Office chairmanship.

RA

Robert Armstrong

3rd January 1980

PART 1 ends:-

CC (79) 26th Concs Minute 6

PART 2 begins:-

RTA To TPL A01049 3.1.80.

